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**TAX DISCRIMINATION AGAINST NATURAL GAS
PIPELINES**

4206 ORIGINAL
HEARING

BEFORE THE
SUBCOMMITTEE ON MONOPOLIES AND
COMMERCIAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 2092

TAX DISCRIMINATION AGAINST NATURAL GAS PIPELINES

JUNE 12, 1985

Serial No. 42



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TAX DISCRIMINATION AGAINST NATURAL GAS PIPELINES

WEDNESDAY, JUNE 12, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino, chairman, presiding.

Present: Representatives Rodino, Edwards, Hughes, Synar, Glickman, Feighan, Fish, Shaw, Dannemeyer, and Moorhead.

Staff present: M. Elaine Meilke, general counsel; Warren S. Grimes and Judith Bailey, counsel; Alan F. Coffey, Jr., and Peter Levinson, associate counsel.

Chairman RODINO. The committee will come to order.

Mr. SYNAR. Mr. Chairman?

Chairman RODINO. The gentleman from Oklahoma.

Mr. SYNAR. I ask unanimous consent that the committee permit the meeting this morning to be covered in whole or in part by television broadcast, radio broadcast, and/or still photography pursuant to rule 5 of the committee rules.

Chairman RODINO. Without objection, it is so ordered.

This morning, the Subcommittee on Monopolies and Commercial Law meets to hear testimony on proposed legislation to prevent States from taxing interstate natural gas pipelines in a discriminatory fashion.

The Judiciary Committee has received a sequential referral of this proposed legislation because it is within our jurisdiction. Under Rule X of the Rules of the House of Representatives, the Judiciary Committee has jurisdiction over any bills regulating the authority of the States to impose taxes on interstate commerce.

The provision before us today was added as a nongermane amendment to H.R. 2092, which concerns appropriations for pipeline safety, during a markup in the Committee on Public Works and Transportation.

The provision generally would prohibit States and localities either from applying to interstate pipelines a higher tax rate or from assessing them at a higher ratio to fair market value when compared to other commercial or industrial property.

Proponents of the legislation, primarily representatives of the gas pipeline industry, argue that it is necessary to prevent States from unfairly causing an increase in gas rates to consumers in

other States since taxes charged to the pipeline companies ultimately are passed on to customers in the rates set by the Federal Energy Regulatory Commission.

Opponents, however, argue that there has not been sufficient study of pipeline taxation to conclude that any discrimination imposes a sufficient burden on interstate commerce to justify corrective Federal legislation intruding upon the States' power to tax. Moreover, they contend that this legislation could create the anomalous situation where interstate gas pipelines are subject to a lower tax than similar property, such as oil pipelines and even intrastate gas pipelines.

We, of course, this morning are prepared to hear testimony from both sides of the issues. We have two panels of witnesses. The first panel will consist of former Senator Marlow W. Cook, Mr. James W. McBride, and Mr. Jerry T. Verkler.

Would the first panel please come to the witness table?

Our first witness this morning is the distinguished former Senator from the State of Kentucky, one who has certainly earned the respect of his colleagues during the time that he was in Congress and one who continues to be a pleasant reminder that people who serve in the public interest are always highly and well regarded.

I am pleased to welcome you here, Senator Cook. Would you please proceed as our first witness?

TESTIMONY OF MARLOW W. COOK, BISHOP, LIBERMAN, COOK, PURCELL & REYNOLDS; JAMES W. MCBRIDE, LAUGHLIN, HALLE, GIBSON & MCBRIDE; AND JERRY T. VERKLER, SENIOR VICE PRESIDENT, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

Mr. Cook. Mr. Chairman, thank you very, very much; distinguished gentlemen of the committee.

I would like to ask that my statement be placed in the record in full. Very frankly, all I want to do is make a short comment so that other people can go more deeply into it and we can answer questions.

Chairman RODINO. Without objection, your statement will be inserted in the record.

Mr. Cook. Mr. Chairman and gentlemen, in the field of State property taxation interstate gas pipelines are assessed at a higher proportion of value than other property in States which employ a systematic method of discrimination in property tax assessments.

Classification of property at different percentages of market value is used to assess pipelines at the highest end of the spectrum. Classification by legislation or by administrative practice was prohibited by Federal law in 1976 for railroads, and later on, I might suggest, for airlines, for trucking companies, for bus companies, et cetera, because they constituted a burden on interstate commerce.

The Supreme Court upheld the constitutionality of this Federal law as early as 1981.

The railroad industry obtained relief from this discrimination through Federal legislation, as we know it, in the Federal Revitalization and Regulatory Reform Act for Railroads, the so-called 4-R Act.

Gas pipelines need Federal legislation to eliminate this discrimination. Benefits of lower taxes will be passed on to the consumer in the determination of cost of service in ratemaking by Federal energy regulatory commissions.

Now, Mr. Chairman, rather than go into detail, I'll start with the most famous case, I guess, in this field, which is *Maryland v. Louisiana*, when Louisiana attempted to impose a 4-percent tax on gas flowing through Louisiana, which would be picked up by all of the customers in your State, and all the States up the east coast and the Midwest. And, as a result of that case and the Supreme Court knocking down that case, we have the first semblance of a new creative response to States who need tax dollars. They give them interstate functions so that people outside of their respective States pay that tax and the people within the State do not have to.

California is going to testify that this causes great havoc for the State of California.

We totally disagree with California. We state emphatically that this bill—if this amendment, as it is presently worded is passed, it will not cost California one dime, regardless of their testimony.

As a matter of fact, the distinguished former Congressman from California, Congressman Hinshaw, was the one that created the so-called Hinshaw amendment. Hinshaw pipelines are intrastate pipelines which buy their gas from interstate lines. They buy it within the State. They then distribute it wholly within the State, as is the case in California, and consequently they are not regulated by FERC whatsoever, and they would not come under the jurisdiction of this amendment.

As a matter of fact, the interstate pipelines as presently exist in the State of California—if you will see our addendum to my remarks which shows the amount of money collected by interstate pipelines in the respective States, California presently collects approximately \$720,000 from those interstate pipelines. If this is passed, California will continue to collect \$720,000.

The unfortunate part about the California position is that they are here from the standpoint of the taxes they will collect. If they would look at it from the standpoint of the consumer in California, they would realize that gas coming into California that the intrastate lines must purchase—for instance, gas coming from Oklahoma, gas coming from Kansas, gas coming through the Arizona pipelines—as a result of their discriminatory taxation, the people in California are paying probably far in excess of the \$17.5 million in additional gas rates that the assessors contend they will lose in the State of California, which we totally disagree with.

As a matter of fact, I would like to put in the record, Mr. Chairman, a statement that was made by the head of the tax assessors in the United States that says that there isn't any question about the fact—here it is—"Assessment Law Notes: Recent Court Cases Involving Equalization Ramifications and Trends." Mr. James Gossett, who is their chief counsel, says, "At the State level, on the other hand, utilities seem to have very little 'clout'—as we say in Chicago. The 4-R Act, the Motor Carrier Act—this legislation was passed for a reason. Historically, the State and local governments have tried to sock it to utilities tax-wise, because utilities are not politically popular."

That was a speech that was made in 1983 at their annual conference. I would like to put it in the record.

Chairman RODINO. That document will be accepted for the record.

[Article in appendix at page 188.]

Mr. Cook. Second, Mr. Chairman, the Williams Co. will testify that this should apply to liquid lines. They say that it should apply to telephone companies and so on.

This committee is very, very familiar with the telephone industry and the fact that it is regulated at the State level almost uniformly throughout the United States, and for the Congress of the United States to put it in a position where you are going to attempt to regulate this on the national level is a job that I really wouldn't want this committee to look forward to.

I might suggest to you, though, Mr. Chairman, that the liquid lines were invited to participate and become a part of this proposal. They were asked to become a part of this proposal.

We requested that they do the statistical work that we had already done to present this amendment to the Congress. We gave them every opportunity to present that statistical information, and they failed to do so.

As a result of that, we met again in December of 1984, asked them again if they would participate, and at that time it was the decision of the Oil Pipeline Association that they did not wish to join in this effort. So I can only say to you that they had every opportunity.

If it's the desire of this committee to broaden this and include liquid lines, we have no objection to that, but I would suggest to you that the statistical information to back it up, to show that there is discrimination, as there is in the gas pipeline industry, has not been made available to us so we could make it available to this committee.

We are only saying, Mr. Chairman, that as a result of the discriminatory tax practices of certain States, it is the consumers in the State of New Jersey, it is the consumers in the State of California, who are paying the additional taxes that are being collected in the respective States because they are assessing and collecting taxes at a higher rate than other commercial and business properties within that State.

We are sorry that we are here on a piecemeal basis for gas pipelines, but the history of the Congress has been that it did it separately and piecemeal for railroads, airlines, buses, and the trucking industry, and we are here to seek that same relief.

Thank you, Mr. Chairman.

[The statement of Mr. Cook follows:]

STATEMENT OF MARLOW W. COOK, PARTNER, BISHOP, LIBERMAN, COOK, PURCELL &
REYNOLDS, WASHINGTON, DC

DISCRIMINATION IN PROPERTY TAXATION
OF INTERSTATE COMMERCE

My name is Marlow W. Cook and I am appearing before this Committee to address a matter of equity in the state taxation of natural gas pipeline property operating in interstate commerce. A coalition of pipeline companies has formed to bring to the attention of Congress a present inequity that needs correction through federal legislation.

There exists in this country a pattern of discriminatory assessment practices in many states which result in property taxes higher than the proportion of taxes paid by other commercial and industrial property owners in many of the 48 states in which pipelines operate.

Discriminatory tax treatment can take several forms. One such form is based on legal classification of property by states which use a statutory classified property tax system that place gas pipelines in the highest classification. Some of these classification systems grew out of court suits over the practices of state assessors in treating utilities, including pipeline companies, unfairly. The state answer to this was to amend the law to provide for a discriminatory classified property tax system.

A second form is de facto classification where disparity in assessment ratio is reflected in the level of assessment used by the state tax assessors. This goes on despite state constitutions which mandate full and fair assessments.

Moreover, as soon as a court declares the discriminatory tax to be illegal, the state takes steps to legalize what it was doing illegally. Recently one state passed legislation which would classify utility property at 30% of fair market value while setting the percentage at 15% for all other property. The effect of this is to tax pipelines 100% greater than commercial and industrial property. Other states have enacted laws setting percentages of assessed value on gas pipeline property from 30% to 67% higher than other commercial and industrial property.

A third form of discriminatory tax treatment is through improper valuation and allocation methods. Despite state uniform valuation laws that require all properties to be valued at market value, in practice, what occurs is that natural gas pipelines are valued at market value, or more, every year - while other properties are valued as infrequently as every 5 to 10 years.

As a part of this statement there is attached a schedule showing the state property taxes of interstate natural gas pipelines for 1983. Column "C" and "D" show the percentage of discrimination in the level of assessment in several states. Column "E" shows the lower amount of taxes that would have been paid had the proposed legislation been effect in 1983. Column "F" shows the amount of discriminatory taxes paid by gas

pipeline companies in that year. The data was extracted from the interstate pipeline companies annual reports for 1981 filed with the Federal Energy Regulatory Commission.

A form of tacit discriminatory tax treatment is the ineffectiveness of state court remedies. Seemingly many of the problems mentioned above could be resolved in state courts. However, appeals made to State Tax Boards or Commissions fall upon deaf ears. Subsequent appeals to a state court result in the court deferring to the findings of the state tax agency. The railroads ran this same "Catch-22" cycle until federal legislation prohibited discrimination in the state taxation of railroad property.

I can assure you that litigation to achieve fairness for pipelines in state courts would be extremely expensive, time-consuming, and fruitless in view of the experience of all utilities. Ultimately, discriminatory taxes add to the cost of service which is paid by the consumer. Administrative proceedings on property tax assessments are so structured that it is almost impossible for a natural gas pipeline to gain relief. The original administrative appeal board in some states is closely associated with the assessing body. Appeal to the courts is from the administrative body, but grounds for appeal are so narrow and the opinions of the administrative board are written in such a way as to make it extremely difficult to gain equitable treatment.

In 1948 the United States Code was amended at 28 USC §1341 to limit the use of Federal District Courts for suits for injunctive relief for property owners against state taxing agencies. This was done to protect the states ability to collect general revenues for the orderly operation of state and county business. However, where interstate commerce is affected by discriminatory, burdensome tax assessment, an exception should be made to permit an opportunity to prove discrimination in Federal District Court.

Under current federal law, there is no provision to prohibit discriminatory tax treatment of property belonging to interstate natural gas pipeline companies. With respect to property belonging to other companies operating in interstate commerce, several laws have been passed to prohibit discriminatory tax treatment very similar to that which interstate natural gas pipeline companies currently experience. The railroad industry sought and received relief in the Railroad Revitalization and Regulatory Reform Act of 1976 the so-called, "4-R Act" (Pub. L. No. 94-210). The Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248) protects airlines from discriminatory taxes. The trucking industry was granted relief in the Motor Carrier Act of 1980 (Pub. L. 96-296).

It becomes relatively easy for a state assessor to apply a higher assessment ratio against pipeline property, since the industry cannot relocate to a better tax climate. Moreover,

gas pipelines operating in interstate commerce serve consumers in states far beyond its borders. Since the additional taxes are passed on as "cost of service" to the consumer, the taxing state has effectively "exported" its tax burden to citizens of other states. States which classify interstate gas pipeline property at a higher percentage of value than on other property are creating a discriminatory burden on interstate commerce.

There are also several misconceptions which must be clarified. Historically, the foundation of property taxation was based on the premise that a property owner would share in the cost of local services in proportion to the value of his property in relation to the value of the total property in that governmental unit. That foundation now has been shattered through selective grants of exemption and inequitable property classification systems.

Secondly, tax authorities perceive the gas pipeline industry as having "deep pockets" and therefore "fair game" for those who are trying to protect both their source of revenue and the other classes of taxpayers. This practice has been corrected for railroads, airlines, trucks and bus companies. The old rationale is still applied to natural gas pipeline companies, however, and the logic is as false today as it was for the other industries before they were granted relief.

A final misconception is that tax savings obtained through federal legislation would be a direct benefit to the industry's balance sheet. However, the fact is that since the natural gas pipeline industry is regulated by the Federal Energy Regulatory Commission, any reduction in property taxes obtained through this legislation would flow through directly to the consumers.

CONCLUSION

Current law should be amended to prohibit discriminatory state tax treatment of property of interstate natural gas pipeline companies so as to remove an undue burden on interstate commerce. The United States Code presently contains an antiinjunction provision protecting state governments from suits which would interfere with the orderly assessment of taxes for the collection of general revenues. An exception should be adopted where interstate commerce is adversely affected. Prohibition of this discriminatory tax treatment would promote equity and fairness as between the state property tax treatment of interstate natural gas pipeline company property and the property of other commercial and industrial companies not subject to discriminatory tax treatment. In addition, the prohibition of discriminatory tax treatment of interstate natural gas pipeline companies would be consistent with the policy and Congressional intent underlying recent legislation prohibiting such discriminatory state tax treatment of airlines, buses, trucks and railroad companies.

NATURAL GAS PIPELINE COMPANIES
EFFECTS OF PROPOSED FEDERAL LEGISLATION
BASIS OF STUDY - 1983 TAX YEAR

COLUMN A	*COLUMN B*	*COLUMN C*	*COLUMN D*	*COLUMN E*	*COLUMN F*
STATE	1983 TAXES (1)	PIPELINE/INDUSTRY LEVEL OF ASSESSMENT	OTHER COMMERCIAL & INDUSTRIAL LEVEL OF ASSESSMENT	1983 PIPELINE TAXES @ COMMERCIAL & INDUSTRIAL LEVEL	ESTIMATED DISCRIMINATORY TAXES
				COL. B / (C / D)	COL. 9 - COL. E
ALABAMA (2)	2,196,199	30%	20%	1,464,073	732,036
ALASKA	0			0	0
ARIZONA (2)	13,623,461	38%	25%	9,094,382	4,729,079
ARKANSAS (3)	8,499,278	20%	12%	5,099,567	3,399,711
CALIFORNIA	719,204			719,204	0
COLORADO	7,377,182			7,377,182	0
CONNECTICUT	609,192			609,192	0
DELAWARE	43,030			43,030	0
FLORIDA	1,381,844			1,381,844	0
GEORGIA	1,942,051			1,942,051	0
HAWAII	0			0	0
IDAH	1,118,584			1,118,584	0
ILLINOIS	2,477,074			2,477,074	0
INDIANA	2,940,151			2,940,151	0
IOWA (3)	44,505,243	100%	65%	28,928,408	15,576,835
KANSAS (3)	22,974,122	30%	22%	9,167,649	13,786,473
KENTUCKY	4,162,126			4,162,126	0
LOUISIANA (2)	35,941,894	25%	15%	21,565,139	14,376,755
MAINE	0			0	0
MARYLAND	9,849,018			9,849,018	0
MASSACHUSETTS	2,940,636			2,940,636	0
MICHIGAN	41,316,638			41,316,638	0
MINNESOTA (2,4)	15,547,407	45% (PP)	0.00% (PP)	5,107,481	12,437,926
MISSISSIPPI (2)	9,673,581	30%	15%	4,836,791	4,836,790
MISSOURI	2,703,463			2,703,463	0
MONTANA (2)	7,466,237	100%	22%	2,399,194	5,077,043
NEBRASKA (3)	7,760,491	100%	70%	5,432,344	2,328,147
NEVADA	754,460			754,460	0
NEW HAMPSHIRE	232,475			232,475	0
NEW JERSEY	4,539,666			4,539,666	0
NEW MEXICO	5,363,465	100%	67.5%	2,344,839	1,138,626
NEW YORK	44,884,753			44,884,753	0
NORTH CAROLINA	543,070			543,070	0
NORTH DAKOTA	6,916,702			6,916,702	0
OHIO (2,4)	21,746,111	100% (PP)	35% (PP)	10,438,133	11,307,978
OKLAHOMA	14,744,949	24%	12%	6,895,361	7,839,588
OREGON	2,323,405			2,323,405	0
PENNSYLVANIA	924,752			924,752	0
RHODE ISLAND	975,358			975,358	0
SOUTH CAROLINA	903,781			903,781	0
SOUTH DAKOTA	3,652,278			3,652,278	0
TENNESSEE (2)	2,877,212	55%	40%	2,092,518	784,694
TEXAS	33,266,583			33,266,583	0
UTAH	1,835,085			1,835,085	0
VERMONT	0			0	0
VIRGINIA	4,489,974			4,489,974	0
WASHINGTON	2,343,351			2,343,351	0
WEST VIRGINIA	10,895,221			10,895,221	0
WISCONSIN	2,646,983			2,646,983	0
WYOMING	4,679,592			4,679,592	0
WASHINGTON, D.C.	298,967			298,967	0
TOTALS	417,948,421	-	-	319,518,739	98,449,682

NOTES: (1) EXTRACTED FROM FERC FORM NO. 2 - ANNUAL REPORT OF NATURAL GAS COMPANIES - YEAR OF REPORT 12-31-82

(2) REFLECTS STATES WHICH HAVE "LEGAL" CLASSIFICATION; ALL OTHER STATES LISTED REFLECT "DE FACTO"

(3) BASED ON 1982 BUREAU OF THE CENSUS STUDY ENTITLED - TAXABLE PROPERTY VALUES AND ASSESSMENT SALES PRICE RATIOS

(4) COLUMN "E" CALCULATION BASED ON FOLLOWING FORMULA - (COL. B @ 80%) / (C / D) @ (B @ 20%) (THIS ADJUSTMENT PERTAINS ONLY TO PERSONAL PROPERTY WHICH, IN BOTH MINNESOTA AND OHIO, IS ESTIMATED TO BE 80% OF TOTAL TAXES).

Chairman RODINO. Thank you, Senator Cook.

Our next witness is Mr. James W. McBride, who is a partner in the law firm of Laughlin, Halle, Gibson, & McBride.

Mr. McBride.

Mr. McBRIDE. Thank you, Mr. Chairman.

My name is James McBride. I am engaged in the private practice of law here in Washington, DC. For much of the last several years, my practice has involved State tax litigation—litigation of State tax discrimination cases—and for that reason I have been asked to testify this morning with respect to why Federal court jurisdiction is necessary if Congress is going to pass this legislation.

Presently, pipelines have to litigate all State tax questions in State courts. Historically and presently, those pipelines and other public utilities simply have not been able to obtain relief from State tax discrimination in those forums. There are essentially four reasons why that is true.

The first of those reasons is that almost all of those cases must initially be tried before a State administrative agency. That State administrative agency many times is the very same administrative agency who has, in fact, set the assessment for the public utility. In other words, they are simply called on to look at the work that they have themselves done.

Before those administrative agencies, many times there are very extreme and heavy burdens of proof imposed on the public utilities that appear there, burdens of proof that are different than those imposed on local taxpayers, local businesses, if you will, and we have cited in my prepared testimony the State of Iowa that is an example of that which permits local taxpayers in going before their boards of review simply to prove that their assessments are erroneous by a simple preponderance of the evidence.

However, when a centrally assessed public utility, like a pipeline, goes before its board, it must prove that the administrative agency has been arbitrary and capricious in order to prevail, a burden which we submit is one that is practically impossible to meet.

The second reason why Federal court jurisdiction is necessary is that once those administrative agencies have made a determination, almost uniformly, that administrative agency determination is only subject to some type of appellate review. Once it goes to the courts of the State, those State courts are not entitled, in general, to look afresh and weigh the evidence and to decide whether or not there has been an error in the assessment of these pipelines.

The State courts may themselves only look under a very narrow scope of review to determine whether or not there has been any material evidence to support what the local administrative agency has done.

So, as a practical matter, centrally assessed taxpayers never get a hearing in a State court on State tax matters.

Reason No. 3 is that occasionally a public utility will win a discrimination case in State court. Once that is accomplished, generally the relief is only prospective, and we have cited two examples of that in our prepared testimony. It has been almost uniformly true that when that happens, the States have come back and amended their constitutions to sanction the very discrimination which the courts have found to exist, and we have cited the examples of Ari-

zona, Tennessee, and Alabama where, once a case has finally been decided and the public utility has won, then the State constitution is amended to permit a different and differential treatment of the public utilities.

Reason No. 4 is that many times these particular State actions require things to proceed on a county-by-county basis, which would require multiplicity of lawsuits, whereas if a Federal remedy is provided, only a single lawsuit would be required.

I will say from experience that if, in fact, a Federal remedy is provided but not Federal court jurisdiction, one finds oneself trying to take a Federal cause of action and somehow, with a shoehorn, fit it into a State procedure which is not designed to accomplish that.

Experience has proven and Congress has already found in the areas of taxation of other interstate carriers that for legal, practical, and political reasons interstate carriers do not receive relief from discrimination in State court. Pipelines, like the railroads, must, therefore, have access to the Federal courts in order to avail themselves of the remedies which would be provided for by this act.

Let me take just 1 more minute to address the definitional problem which seems to have arisen with respect to the question of what types of companies would be covered by this particular bill.

This bill is intended to apply to interstate gas transmission companies which are regulated by FERC. It is not intended to apply to intrastate gas distribution companies which are regulated by State agencies.

In my prepared testimony, I have suggested perhaps an amendment which could be adopted to make it absolutely clear that companies which are subject to the Hinshaw exemption, which are intrastate only, would not be covered by this provision, and it seems to me that would indeed answer most of the problems that the State of California has because practically all of the natural gas pipelines in that State are subject to a Hinshaw exemption—that is, that they are intrastate in nature and that they are not regulated by FERC.

Thank you very much, Mr. Chairman.

[The statement of Mr. McBride follows:]

STATEMENT OF JAMES W. McBride, Partner, Halle, Laughlin, Gibson & McBride,
Washington, DC

THE NEED FOR A FEDERAL REMEDY AND FEDERAL COURT
JURISDICTION TO ELIMINATE DISCRIMINATORY STATE
TAXATION OF NATURAL GAS PIPELINE COMPANIES

My name is James W. McBride, a Partner in the Washington office of the law firm of Laughlin, Halle, Gibson and McBride. I have been involved with state and local taxation of interstate carriers for over 15 years and have been specifically involved in the litigation of cases involving discrimination in state taxation for 10 years.

This statement addresses proposed legislation which would prohibit discriminatory state taxation of natural gas pipeline companies, and would provide a federal forum to redress that discrimination. Other witnesses have and will present evidence and testimony concerning the extent of discrimination against natural gas pipelines in state property taxation. The purpose of this statement is to emphasize the necessity of access to federal courts, which is made necessary by the inadequacy of state administrative and judicial remedies to provide relief to interstate pipeline carriers.

The Congress, and more specifically the Senate Committee on Commerce, Science and Transportation, has already extensively researched the adequacy of state remedies for interstate carriers, including pipelines, in connection with its consideration of Section 306 of the Railroad Revitalization and Regulatory Reform Act. This statement will address the findings of the investigation in considering legislation, more specifically the Doyle Report

(National Transportation Policy, report of the Committee on Commerce, S. Rpt. No. 445, 87th Cong., 1st Sess., 1961), and Discriminatory State Taxation of Interstate Carriers, S. Rpt. No. 91-630, 91st Cong., 1st Sess., (1969), with particular emphasis on pipeline company litigation.

1. Existence of Discrimination

The majority of states provide for the assessment of pipelines and other interstate carriers by a state agency rather than by county or municipal assessors. This practice results from the fact that the property of interstate carriers, and particularly pipelines, not only covers a number of states but also crosses several counties within a state. It is a well accepted practice that public utility property, such as pipelines, should be appraised for assessment purposes as operating units rather than by local assessment of individual parcels of property within a county or municipality. Therefore, in the vast majority of states, a natural gas pipeline company is appraised for property tax purposes as an entire interstate operating unit with the application of an allocation formula to allocate a portion of the total unit value to the state, and distribution of the unit value to counties and municipalities.

As a rule, this appraisal or determination of market value is performed by staff members of the state's department of revenue. The pipeline property is appraised annually by professional

appraisers who undertake to value the pipeline property each year for property tax purposes at no less than its fair market value.

Other commercial and industrial property in the vast majority of jurisdictions is appraised for property tax purposes at the local level by county assessors. Local assessment practices often lack the sophistication or professionalism of state assessment practices, and, as a result, other commercial and industrial property is appraised for property tax purposes at a lower percentage of market value than is the case with natural gas pipeline property. In virtually every state other commercial and industrial real property is reappraised for property tax purposes infrequently, while natural gas pipeline company property is, in those same states, reappraised annually by the state. As a consequence, by operation of inflation alone, locally assessed business property is invariably appraised for tax purposes at a lower percentage of market value than natural gas pipeline company property. In either instance, whether de facto discrimination has been caused by poor local assessment practices, or whether de facto discrimination has been caused by operation of inflation, the natural gas pipeline companies necessarily bear a greater portion of the property tax burden, because pipeline appraised values are allocated to local governments and the same tax rate is applied by local governments to disproportionate values or assessments.

To determine whether properties are being assessed on a fair basis, there needs to be some comparative analysis of the

properties of utilities and commercial and industrial owners. This had led to the development of a test known as a sales assessment ratio study which is in widespread use by property tax administrators. The extent of de facto discrimination in property taxation can be shown by such a sales assessment ratio study. The ratio study is a statistical measurement. The sales assessment ratio study determines the average level of assessment of locally assessed real property relative to its market value. The ratio of assessed value to market value of property is determined by examining the affidavit of value or deed stamps on a recorded deed and comparing that value to the tax assessors' appraised value for ad valorem tax purposes. The assessed value is the numerator; the selling price is the denominator. The resulting percentage is the ratio of assessed value to market value for the individual sale sample. Individual samples are edited to exclude transfers which do not appear to be at a arm's length, such as transfers between family members, or related corporations. Those sample ratios surviving the editing or verification process are then used to calculate average levels of assessment or levels of appraisal for assessment purposes.

The Bureau of the Census conducts a sales assessment ratio study in each state every five years as a part of the Census of Governments. Invariably, the results of the Census Bureau ratio study show that locally assessed commercial and industrial real property is, on an average, assessed substantially below the level of assessment prescribed by state statute. As an example, in the

State of Kansas, the 1982 Census of Governments, which was just recently published, shows that locally assessed commercial and industrial real property is assessed at 12% of market value, whereas the level of assessment mandated by statute in Kansas is 30%. Thus, due to de facto discrimination, each natural gas pipeline company in Kansas pays a disproportionate share of the property tax when its state determined value is apportioned to the Kansas counties, because it is thereby required to pay property taxes on the basis of 30% of value, while other businesses in the same county pay property taxes on the basis of 12% of value.

The situation with regard to locally assessed commercial and industrial personal property is no better. State tax administrators in most jurisdictions candidly admit that the business personal property tax is poorly administered in most counties, and that, as a consequence, large amounts of business personal property escape taxation altogether. Even those counties which do attempt to appraise business personal property annually at the statutory assessment level fall far short of the mark because of inadequate resources available to local assessors to administer a tax that is extremely difficult to administer. In addition, several states (e.g. North Dakota and Iowa) in recent years have eliminated commercial and industrial personal property from the tax base by exempting it. While business personalty is exempt, the personal property of centrally assessed taxpayers remain subject to tax. This trend, resulting in inequality in taxation for pipelines, can

be, and should be, effectively curtailed by directing courts to consider exempt business property in determining the effectiveness of commercial and industrial personal property assessment practices. Types of property traditionally exempt, such as property devoted to religious, educational and charitable uses, would, of course, not be affected, because of their non-business character.

There is another form of de facto discrimination in property taxation. In some jurisdictions the discrimination resulting from lower than market values for locally assessed commercial and industrial property is compounded by determining values for utility and pipeline property at values which are higher than market. Although overvaluation has not been as much of a problem for natural gas pipelines as undervaluation of locally assessed business property, the proposed legislation should and does permit the federal courts to consider the level of assessment of the natural gas pipeline as well as that of local business property, which is essential to prevent any effort by a state to circumvent federal prohibition of tax discrimination by the simple expedient of overvaluation.

2. Lack of an Adequate Remedy

The majority of states provide for administrative review of tax assessments before some type of administrative tribunal, such as the State Board of Equalization, the State Tax Appeal Board, the Tax Commission, or some similar body. These administrative review

agencies are staffed by members who are appointed by the governor, with or without the concurrence of the legislature, or who serve by virtue of political office. Unfortunately, these agency members are usually closely connected with the revenue department staff members whose appraisals they are obligated to review. One striking example is the statutory scheme in Wyoming. The governor in Wyoming appoints three tax commissioners, who are the executive heads of the Wyoming Department of Revenue and Taxation. These same three commissioners also comprise the State Board of Equalization. If the pipelines are dissatisfied with the assessment, they must file their appeal with that same State Board of Equalization which initially approves the assessments in the first place.

In addition to the fact that the make-up of these administrative tribunals relies on political considerations, their determinations of inequitable assessments against pipelines are foreclosed by principles of review that place pipelines at a disadvantage. For example, three pipelines recently appealed their assessments in the State of Iowa to the Iowa State Board of Tax Review. In denying the appeals of the pipelines, the Board noted that, in proceedings before the Board, there exists a strong presumption that the Department of Revenue has properly performed its valuation function, and that the appealing pipelines had a heavy burden of showing by clear and convincing evidence that the Department had acted arbitrarily, capriciously, or illegally. It should be noted that the Iowa legislature had removed this heavy

burden of proof for locally assessed taxpayers, but the Board concluded as a matter of law that centrally assessed taxpayers, such as pipelines, still carried a heavy burden of proof. In the Matter of Michigan-Wisconsin Pipe Line Co., Williams Pipe Line Co. and Natural Gas Pipeline Co. of America, No. 302 (Iowa State Board of Tax Review, filed August 17, 1983).

Interstate carriers such as pipelines fare little better before the state courts than they do before administrative tribunals. This is because, in almost all states, state judicial review of assessments is narrow in scope. Almost all states employ standards of judicial review which require the courts to "rubber-stamp" approval of the assessments in the absence of clear evidence of arbitrary, capricious, or illegal action, or of an absence of substantial and material evidence. As a practical matter, such review standards can rarely be met. As the Doyle report pointed out in regard to state appeals by interstate carriers, "The burden thus imposed on the complaining party to overturn decisions of assessors or action by state equalization agencies is obvious." See p. 458.

Even more discouraging is the willingness of some state courts to uphold undisputed discrimination in taxation in spite of tax uniformity provisions of state law. The Oklahoma Supreme Court in State ex rel. Poulos v. State Board of Equalization, 646 P.2d 1269 (Okla. 1982), held that the State Board of Equalization must equalize tax assessments of locally assessed taxpayers for the 1982

tax year among the counties of Oklahoma because of the Oklahoma constitutional requirement of "uniformity and equality of taxation on a statewide basis." (p. 1293). Two telephone companies in Oklahoma later appealed to the Oklahoma Supreme Court for relief from tax discrimination for the same tax year. Natural gas pipelines operating in Oklahoma also appeared in the case as intervening plaintiffs. McLoud Telephone Company v. State Board of Equalization, 655 P.2d 1037 (Okla. 1982). In the case of the telephone companies, the Oklahoma Supreme Court adopted a completely different view and held that: "[p]roperty of public service corporations is constituted and recognized at least implicitly, if not also explicitly, as a distinct class for taxation purposes." (p. 1037). Relief was denied.

3. Resort to Classification Schemes to Perpetuate Discrimination

There is yet another factor which is a cause of the inadequacy of relief from discrimination by pipelines on the state level. As has been pointed out, state administrative bodies and judicial bodies are bound by their state law and constitution. Even in those instances where pipelines and other utilities receive equalization relief from discriminatory taxation, an easy legislative response is to adopt classification schemes to perpetuate the discrimination. The States of Tennessee and Arizona, in the field of railroad taxation, provide examples of this phenomenon. In Southern Pacific Company v. Cochise County, 92 Ariz. 395, 377 P.2d 770 (1963), the Arizona Supreme Court held that the

state's de facto property classification system whereby railroad property was assessed at 89% of full cash value rather than the 20% figure applied to all other property violated the Arizona constitutional requirement for uniformity of taxes. However, the court held that its ruling would be prospective in nature, thus allowing the state to adopt a new de jure property classification system, which it in fact did. Four categories of property were created according to use, and utilities were placed in the category receiving the highest rate of assessment. Despite the fact of the heavier burden carried by the utilities under this system, it passed constitutional muster in Apache County v. Atchison, Topeka & Santa Fe Railroad Company, 106 Ariz. 356, 476 P.2d 657 (1970), appeal dismissed, 401 U.S. 1005, 91 S.Ct. 1257, 28 L.Ed. 2d 542 (1971).

Similarly, in the State of Tennessee, a Tennessee appellate court was critical of the higher de facto level of assessment of railroad property as compared to other commercial and industrial property. However, the relief granted by the court of appeals was purely prospective. See Southern Railway v. Clement, 57 Tenn. App. 54, 415 S.W.2d 146 (1966). The state legislature responded by proposing and securing the passage of an amendment to the state constitution, which provided a de jure level of classification, thus allowing a higher assessment level for public utility property; 55% for public utilities, 40% for commercial and industrial realty, and 30% for commercial and industrial personalty. This classification system then withstood scrutiny in the state courts (See Snow v. City

of Memphis, 527 S.W.2d 55 (1975)), although it was later successfully challenged by railroads in federal court under Section 306.

Efforts by pipelines to attack state property tax classification schemes have failed. In Alabama, utility property, including pipeline property, is classified as class one property, and is by law assessed at a higher percentage of its fair market value than other commercial and industrial property (class two property). Colonial Pipeline Company brought an action in Alabama courts challenging the validity of the property tax classification scheme. The trial court held that the taxation of utility property at a higher assessment level violated both federal and state constitutions. The Alabama Court of Appeals, however, ruled that classification of property for tax purposes is within the broad powers of the legislature, and is presumed valid under the Alabama state constitution. Furthermore, the classification passed federal constitutional muster because there was at least a "rational basis" for the discriminatory effect of the tax. The Alabama Court of Appeals did note that federal law now prohibits such discrimination against railroads, airlines and trucking companies, but that in absence of federal legislation, such discrimination was permissible against pipelines. The Court said:

"Were it not for the supremacy of federal statutes over state law, airlines, trucklines and railroads . . . would be subject to the same Class I classification as is assigned Colonial's property. The preemption for tax purposes of

those other entities does not destroy the classification by state law from which they were exempted and to which Colonial continues to belong."

State of Alabama v. Colonial Pipeline Co., Civ. 3824 (Alabama Court of Civil Appeals, filed January 25, 1984) p. 10.

4. Requirement of a Multiplicity of Suits

The pipelines, as do other interstate carriers, face another administrative problem when seeking tax relief. Pipelines may cross through several counties in a state, but state law sometimes requires a pipeline to file for relief in each of the counties in which it operates. As the Senate Subcommittee found in relation to railroad taxation, this means that a suit must be brought in every county of the state in which the pipeline operates, "a time-consuming procedure quite the opposite of a plain, speedy, and efficient remedy." See S. Rpt. No. 91-630, p. 7. Even in some states, such as North Carolina, where pipelines are "centrally assessed," state law only provides for equalization relief on a county-by-county basis, thereby necessitating a multiplicity of suits each year in which equalization is sought. It is expressly provided by statute in North Carolina that a pipeline or other public service company seeking relief from de facto discrimination must petition the county board of commissioners in each county which relief is sought. General Statutes of North Carolina, § 150-342(c).

By contrast, after adoption by Congress of Section 306, North Carolina railroads were able to obtain relief from de facto discrimination in all counties in North Carolina in which they

operated in a single action brought in federal court. Clinchfield R.R. Co. v Lynch, 527 F.Supp. 784 (E.D.N.C. 1981), aff'd, 700 F.2d. 126 (4th Cir. 1983).

The approach Congress has taken in relation to discriminatory taxation of railroads, as embodied in Section 306, alleviates the very real problem of a multiplicity of lawsuits. Similar federal procedure is desirable for the pipelines as well. Under the proposed legislation, as under Section 306, a pipeline would bring one lawsuit against the state assessing authority, usually the state department of revenue, rather than in each individual county in which the pipeline owns property.

5. Application of the Natural Gas Act to This Legislation.

The bill is intended to apply to interstate gas transmission companies which are regulated by the Federal Energy Regulatory Commission under the Natural Gas Act. The bill is not intended to apply to intrastate gas distribution companies, which are regulated by state agencies.

The bill now before this Committee, however, could be interpreted by the courts in a manner so that it may not effectuate this intention. Under Section 20(a)(5) of the bill, "natural gas company" has "the meaning such term has under the Natural Gas Act." Section 2(a)(6) of the Natural Gas Act broadly defines a "natural gas company" to be a "a person [individual or corporation] engaged in the transportation of natural gas in interstate commerce, or the

sale in interstate commerce of such gas for resale." Section 1(c) of the NGA, however, then limits this definition by providing that the NGA does not apply to any person engaged in the transportation in interstate commerce, or sale in interstate commerce for resale, of natural gas received by such person within or at the boundary of a state, if the natural gas so received is ultimately consumed within such state and the rates and service of such person are subject to regulation by a State Commission. In essence, Section 1(c) limits the definition of "natural gas company" to exclude local gas distribution companies which are state regulated.

In view of these provisions of the Natural Gas Act, Section 20(a)(5) of the bill maybe clarified to provide:

- (5) "natural gas company" means any person engaged in the transportation of natural gas in interstate commerce and subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

This revision makes it clear that the bill applies only to FERC regulated interstate pipelines and not to local distribution companies.

Conclusion

The availability of a federal remedy tends to deter rather than to encourage litigation of tax matters which may interrupt the orderly process of the assessment and collection of taxes. As has been repeatedly proven by railroad tax litigation under Section 306, a firm commitment by Congress to eliminate discriminatory state

taxation of interstate carriers, coupled with the grant of authority to the federal judiciary to effectuate the act's prohibitions, discourages the states from adopting illusory practices and statutory schemes which have in the past and continue today to belie the asserted commitment of the states to provide tax equity for all taxpayers.

The following observation from S. Rpt. No. 91-630 is as pertinent today as it was when written:

Unfortunately interstate carriers, especially railroads, are easy prey for state and local tax assessors. Railroads, oil pipelines, and other interstate carriers are non-voting, often non-resident, targets for local taxation, and cannot easily remove their right-of-way and terminals.

S. Rpt. No. 91-630, P. 3.

Experience has proven, and Congress has already found in the areas of taxation of other interstate carriers, that for legal, practical, and political reasons, interstate carriers do not receive relief from discriminatory state taxation under state law. Pipeline assessment practices, in the absence of federal law, are identical in most states to railroad assessment practices with respect to both de facto and de jure discrimination. Pipelines, like railroads, must therefore have access to federal courts to obtain relief from state tax discrimination, and legislation by Congress to prohibit tax discrimination must contain an exception to 28 U.S.C. § 1341 in order to be effective. Recent proceedings before state administrative and judicial tribunals prove this to be the case.

Chairman RODINO. Thank you.

Our next witness is Mr. Jerry T. Verkler, senior vice president of Interstate Natural Gas Association of America.

Mr. Verkler.

Mr. VERKLER. Thank you, Mr. Chairman.

I will also ask that my statement be incorporated in the record, and I will summarize it.

Chairman RODINO. Without objection.

Mr. VERKLER. Mr. Chairman, I am senior vice president of the Interstate Natural Gas Association of America. Our association represents companies which transport over 90 percent of natural gas sold in interstate commerce in the United States.

Mr. Chairman, you have heard from expert witnesses here who have been retained by 19 of our member companies to address this problem that has long bothered our industry. It has become even more important now that our gas pipeline industry is doing everything it can to try to reduce the costs of natural gas to the consumers in this country.

Although one can say that this is not a great deal of money in and of itself, when you put it together with all the other efforts that we are making to reduce costs to consumers, it becomes more important.

I would only want to emphasize three points, Mr. Chairman. We strongly support the so-called Edgar amendment which has been added to H.R. 2092, which we believe, if implemented, will end this discrimination.

We are grateful for the opportunity to appear before a committee that has had so much to do with ending discrimination in all forms in this country over the past 25 years.

First of all, our industry is not seeking Federal interference in the State taxing prerogatives. We are simply asking that discrimination against interstate pipelines in this form of interstate commerce not be condoned.

Second, what we are proposing is merely an extension of a well-established Federal policy. It should not require lengthy review, for it does not presuppose that any ad valorem tax is discriminatory.

Our pipelines, if we believe that discrimination exists, would still have to make the case and would still have to prove it to the satisfaction of the court.

Finally, as I mentioned before, because these tax payments that we have to make are a part of a pipeline's cost of service, they are now passed on to the ultimate consumers of natural gas, as Senator Cook pointed out, usually in other States.

Because of this, if we can do whatever we can—and this amendment will be helpful—it will go a long way toward reducing the burden on natural gas consumers. They are the ones that would receive the benefits if we are allowed to eliminate this discrimination.

Thank you, Mr. Chairman.

[The statement of Mr. Verkler follows:]

STATEMENT OF JERRY T. VERKLER, SENIOR VICE PRESIDENT, INTERSTATE NATURAL GAS
ASSOCIATION OF AMERICA

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM JERRY T. VERKLER, SENIOR VICE PRESIDENT OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA (INGAA). AS INGAA DOES NOT OFTEN HAVE THE PRIVILEGE OF APPEARING BEFORE THIS SUBCOMMITTEE, I WOULD LIKE TO TAKE A MOMENT TO PROVIDE A LITTLE BACKGROUND INFORMATION ABOUT OUR INDUSTRY AND OUR ORGANIZATION.

INGAA IS A NON-PROFIT, NATIONAL TRADE ASSOCIATION REPRESENTING VIRTUALLY ALL OF THE MAJOR INTERSTATE NATURAL GAS TRANSMISSION COMPANIES OPERATING IN THE UNITED STATES. OUR MEMBER COMPANIES OWN AND OPERATE MORE THAN 200,000 MILES OF PIPELINE AND ACCOUNT FOR OVER 90% OF THE NATURAL GAS TRANSPORTED IN INTERSTATE COMMERCE EACH YEAR.

THE NATURAL GAS INDUSTRY CAN BE DIVIDED INTO THREE SEGMENTS: PRODUCERS, TRANSPORTERS, AND LOCAL DISTRIBUTION COMPANIES OR END-USERS. AMONG THE TRANSPORTERS OF GAS, THERE ARE INTERSTATE PIPELINES, WHICH TRANSPORT GAS BETWEEN PRODUCERS OR OTHER PIPELINES ACROSS STATE LINES AND DELIVER IT TO DISTRIBUTORS OR END-USERS. ALTERNATIVELY, INTRASTATE AND SO-CALLED HINSHAW PIPELINES TRANSPORT GAS WITHIN A STATE.

WITH THE PASSAGE OF THE NATURAL GAS ACT IN 1938, CONGRESS CONCLUDED THAT THE INTERSTATE TRANSPORTATION AND SALE OF NATURAL GAS "IS AFFECTED WITH A PUBLIC INTEREST" AND

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THAT EXTENSIVE FEDERAL REGULATION IS NECESSARY. THE SCOPE AND NATURE OF THIS REGULATION HAS BEEN MODIFIED THROUGH SUBSEQUENT LEGISLATION, MOST NOTABLY THE NATURAL GAS POLICY ACT OF 1978, BUT THE UNDERLYING NOTION THAT REGULATION OF INTERSTATE PIPELINES IS DESIRABLE TO PROMOTE THE PUBLIC INTEREST REMAINS.

INGA/'S MEMBER COMPANIES OVERWHELMINGLY SUPPORT THE AMENDMENT INCORPORATED INTO THE NATURAL GAS PIPELINE SAFETY LEGISLATION, H.R. 2092, BY THE PUBLIC WORKS AND TRANSPORTATION COMMITTEE DEALING WITH DISCRIMINATORY AD VALOREM PROPERTY TAXES. THE PROBLEM OF UNFAIR ASSESSMENT PRACTICES BEING APPLIED TO INTERSTATE PIPELINES BY SOME STATES AND LOCAL TAXING JURISDICTIONS HAS LONG BEEN A CONCERN TO OUR MEMBER COMPANIES. QUITE SIMPLY, SOME JURISDICTIONS TAKE ADVANTAGE OF INTERSTATE PIPELINES TO IMPOSE A DISPROPORTIONATE PROPERTY TAX BURDEN, KNOWING THAT CUSTOMERS OF THE PIPELINES, MANY OF WHOM ARE LOCATED IN OTHER STATES, WILL HAVE TO BEAR THE COST.

THIS PRACTICE HAS BEEN APPLIED TO OTHER MODES OF TRANSPORTATION IN THE PAST, BUT CONGRESS HAS SEEN FIT TO CORRECT THE PROBLEM OF DISCRIMINATION BY DECLARING SUCH ACTS TO CONSTITUTE AN UNREASONABLE DISCRIMINATION AGAINST INTERSTATE COMMERCE AND GRANTING FEDERAL COURTS JURISDICTION TO REVIEW SUCH CASES. THE INTERSTATE NATURAL GAS PIPELINE INDUSTRY IS ASKING THIS SUBCOMMITTEE AND THE CONGRESS TO EXTEND THIS PROTECTION TO TRANSPORTATION BY NATURAL GAS PIPELINE.

UNCLASSIFIED

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THE SUBCOMMITTEE WILL HEAR FROM SPECIAL COUNSEL RETAINED BY NINETEEN OF OUR MEMBER COMPANIES CONCERNING THE EXTENT OF DISCRIMINATION AND THE AMENDMENT APPROVED BY THE PUBLIC WORKS COMMITTEE. I WOULD ONLY EMPHASIZE THREE POINTS. FIRST, OUR INDUSTRY IS NOT SEEKING FEDERAL INTERFERENCE INTO STATE TAXING PREROGATIVES. WE ARE SIMPLY ASKING THAT DISCRIMINATION AGAINST INTERSTATE PIPELINES, AND THIS FORM OF INTERSTATE COMMERCE, NOT BE CONDONED. SECONDLY, WHAT WE ARE PROPOSING IS MERELY AN EXTENSION OF A WELL ESTABLISHED FEDERAL POLICY. IT SHOULD NOT REQUIRE LENGTHY REVIEW FOR IT DOES NOT PRESUPPOSE THAT ANY AD VALOREM TAX IS DISCRIMINATORY; PIPELINES WOULD STILL HAVE TO PROVE THAT TO THE SATISFACTION OF THE COURT. FINALLY, BECAUSE TAX PAYMENTS ARE A PART OF AN INTERSTATE PIPELINE'S COST OF SERVICE, THEY ARE PASSED ON TO THE ULTIMATE CONSUMERS OF THE NATURAL GAS IN THE FEDERALLY REGULATED RATE TREATMENT ALLOWED. IN THE FINAL ANALYSIS, IT IS THE GAS CONSUMERS OF INTERSTATE PIPELINES WHO BEAR THE BURDEN OF DISCRIMINATORY TAX PRACTICES AND IT IS THE CONSUMER WHO WOULD BENEFIT FROM THE CORRECTION OF THIS INEQUITY.

IN CLOSING, MR. CHAIRMAN, I WOULD LIKE TO THANK YOU BOTH FOR CONDUCTING THIS HEARING TODAY AND FOR THE OPPORTUNITY TO TESTIFY. I WILL BE HAPPY TO ANSWER ANY QUESTIONS THAT I CAN.

UNAVAILABLE

Chairman RODINO. Thank you very much.

Senator Cook, of the 14 States that you claim tax interstate gas pipelines discriminatorily, do any of them tax interstate gas pipelines differently than intrastate gas pipelines?

Mr. Cook. Mr. Chairman, my chart, which we have as a part of my testimony, shows the difference between interstate gas pipelines and all other commercial and industrial property.

So if we balance that—Jim, can you answer that question? I would have to say that they do discriminate as against pipelines purely and simply because the intrastate and the interstate fall within different categories.

The 14 States, Mr. Chairman, show Alabama, Arizona, Arkansas, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Montana, Nebraska, New Mexico, Ohio, Oklahoma, and Tennessee.

What we have done in our chart is show the pipeline industry level of assessment as it applies to interstate lines, and then we have shown other commercial or industrial levels of assessment.

Now, Jim, can you respond to this.

Mr. McBRIDE. I would be glad to respond, based upon my limited knowledge, Mr. Chairman.

Chairman RODINO. We would also like you to bear in mind, I'm going to have a followup question as to the \$100 million figure that is mentioned and how much of that \$100 million figure is attributed to those States that discriminate against interstate gas pipelines relative to intrastate gas pipelines.

Mr. McBRIDE. I think Senator Cook has responded with respect to what this bill addresses and the discrimination that we were addressing in that chart. It is a comparison in the chart of interstate natural gas pipelines to locally assessed commercial industrial businesses.

From my understanding, relatively few of those States that are listed there actually treat intrastate and interstate pipelines differently.

Chairman RODINO. Relatively few?

Mr. McBRIDE. Louisiana does treat them differently, because it subjects intrastate or the local pipelines, if you will—

Chairman RODINO. So that is the only State that does?

Mr. McBRIDE. We can certainly provide you with that information, Mr. Chairman.

Chairman RODINO. I wish you would.

Mr. McBRIDE. That is not something we were attempting to address at all here, because that is not the—

Chairman RODINO. That information would be helpful.

Mr. McBRIDE. We will submit that information to you.

But as far as I know, of those States listed, Louisiana is the only one which does, in fact, treat them differently.

Chairman RODINO. Let me ask the other question. Do any of them tax interstate gas pipelines differently than oil pipelines?

Mr. McBRIDE. Not to my knowledge. We can provide you with that information also.

[Information in appendix at page 173.]

Chairman RODINO. Let me ask you this question, Mr. Verkler.

Those who support this legislation assert that the elimination of discriminatory taxes would flow through to consumers, therefore

benefiting the ultimate consumer. But isn't it true then that the FERC mandates rate proceedings in most cases no more frequently than every 3 years? Won't pipeline companies simply record the tax savings as profit until a rate proceeding is required?

Mr. VERKLER. Mr. Chairman, it is true that the tax treatment, just like other costs, would have to be adjudicated before FERC at the next rate filing.

There isn't anything that would prevent a company from making a rate filing early. In fact, some of them have.

As I mentioned in my statement a while ago, the companies have been doing everything they can to try to reduce the price of gas to our consumers because we are in a different world than we have been in the past. We are in a very competitive world. We are competing with oil and other kinds of alternative fuels, and we are trying to lower the prices of natural gas.

So it would be in the best interests of the pipelines to expedite this rate treatment, just like it would be if they cut their labor costs or other kinds of costs that go into our rate base treatment.

So they could do it quicker than that, but it is true that they would probably wait until the next rate filing. Of course, the benefits would accrue to the consumers eventually whenever it did happen. Right now, they are not getting any of that benefit.

I do want to make that point one more time, Mr. Chairman, that we in the natural gas business are in a whole different world than we were even a few years ago. We are in a very "marketing mode" economy right now. We have to do what we can to meet the competition. So it is in our own best interest to do the very best we can to lower all the costs to the consumers in your State and elsewhere in the so-called consuming States which receive this interstate gas.

Chairman RODINO. Senator, in the preparation of your statement, you had certain figures. On what basis were the figures concerning estimated discriminatory taxes prepared? Are you aware of any independent, disinterested groups that have made a study of the taxation of interstate pipelines that could be compared to the figures in your statement?

Mr. COOK. First of all, I don't know whether there is an independent facility that has done it, Mr. Chairman.

In this instance, these were all taken as a review of all of the filings with the FERC and the tax liabilities of the respective interstate pipeline system, so that they were all taken directly from the figures from the filed requirements that the interstate pipelines are required to make before FERC.

All of these tax figures were taken from those as to what the respective tax liabilities are and have been in the respective States that we have listed in our addendum.

Chairman RODINO. You are unaware of any study that has been conducted by an independent group?

Mr. McBRIDE. Let me see if I can respond briefly to that.

A number of those figures on there appear not because of any study but because a State statute mandates differential treatment of public utility property.

As an example, the State of Tennessee requires public utility property, including interstate pipelines, to be assessed on the basis of 55 percent of its fair market value, whereas locally-assessed busi-

nesses are only assessed on the basis of 30 percent of their value. So that discrimination simply requires no proof, it is statutory, and a number of those States on there do that.

Second, the U.S. Census Bureau publishes every 5 years as part of its census of governments a sales assessment ratio study which actually shows prevailing levels of assessment in various jurisdictions.

Those figures were used in some instances; in some instances, figures that actually came out of litigation which the railroads put into evidence and proved.

So there are a number of different things that went into making that up, Mr. Chairman.

Mr. COOK. Might I also say, Mr. Chairman, that in the exhibit that we filed with you, column C and column D are actually rates that have either been established statutorily or through the power of the assessing agencies within the respective States that we have listed.

So those percentages—for instance, Iowa, pipeline industry level of assessment, 100 percent; other commercial and industrial level of assessments within Iowa, 65 percent. Those come directly from the records.

Chairman RODINO. So they do carry a comparison.

Mr. COOK. Yes, Mr. Chairman.

Those are figures that are directly from either statutory language and/or assessing agencies that have the authority within the respective States.

Chairman RODINO. Thank you very much.

Mr. FISH.

Mr. FISH. Thank you, Mr. Chairman.

I'd like to follow up on the chairman's first question. Within these 14 States that have asserted discrimination, is there a distinction between interstate gas pipelines and intrastate?

How about State assessments in these 14 States on utilities such as telephone, oil pipelines, electric utilities? Could you tell us whether or not they are assessed at the same rate as the gas pipelines, or are they not?

Mr. McBRIDE. With almost no exception, all of the other public utilities, the ones that you have just named, Mr. Fish, would be assessed precisely the same way that the natural gas pipelines would be.

The only exceptions would be those companies which already have Federal protection—railroads, which are almost uniformly treated as public utilities, trucking companies, bus companies, and airlines. Those companies would be treated like other businesses within the State.

But you are correct, there would be no distinction between the way natural gas pipelines were treated and, generally speaking, let's say, the local electric utility in the State.

Mr. FISH. How can you argue discrimination if similarly situated industries are all treated the same for tax purposes?

Mr. McBRIDE. I will respond to that briefly. I'm sure Senator Cook probably has something he would like to say.

What we are involved with is, when you are dealing with a local utility company, that local utility company, as a general rule, is

not exporting electricity to other jurisdictions where those ratepayers are subject to paying their rates on the basis of whatever the costs of that utility are.

Similarly, with respect to local telephone companies, those are locally regulated companies.

What we are talking about now with respect to this is an interstate carrier. That carrier has to move gas from Louisiana to New Jersey. In doing that, it moves through a number of States in which, as a practical matter, it doesn't sell to anyone within those States, and yet it is those very States through which it is simply passing that are exacting the discriminatory taxes.

So at the other end of the line, if you will, the ratepayers pay as part of their rates the cost of those discriminatory taxes.

So there is a clear distinction between a local telephone company or the local electric company and an interstate carrier, and Congress has seen fit in a number of instances with respect to other carriers to provide that treatment. It is the interstate nature of these that is important.

Mr. FISH. So the distinction is that the local utility and the local telephone—its service area is within the State, and those people are paying for that service. Whereas the State is reaping a benefit from the gas pipeline which will be paid for by customers in some other jurisdiction.

Mr. McBRIDE. Precisely.

Mr. COOK. Mr. Fish, I think that Jim has laid it out very well, because, as you well know, all of the basic utility, electricity, or rate cases, and the telephone rate cases are all heard at the State level, and they are all imposed locally, except for the long-distance lines, and the long-distance lines become the interstate concept of it.

But all local facilities are assessed locally and, I would say to you, that intrastate gas pipelines under the Hinshaw amendment are all regulated by the respective States.

If there is discrimination, Mr. Fish, it is because of the commerce clause of the Constitution that it shouldn't exist as to interstate pipelines. One of the greatest examples I can give you is that you are an ultimate tremendous consumer of gas that comes out of the South.

If you and I could remember all the days when all the gas came from down on the southern tier from all of the areas on the New York-Pennsylvania border, but that's not so any more.

Consequently, those interstate lines that come through Louisiana, for instance, and come into New York, Louisiana picks up an additional \$14,376,000 as opposed to other properties because, by law, they assess against interstate pipelines a 25-percent rate and a 15-percent rate against all other commercial and industrial businesses.

The people in your State are picking up part of that \$14 million, and they don't get to make a determination as to whether there should be discriminatory rates or not, because they are not voters in Louisiana.

So the only thing I can say to you is that the commerce clause says that this shall not be done, but what we are seeing is a multitude of tax concepts that are not political decisions that are harm-

ful within the State, because they are a tax which is passed on to the ultimate consumers at the end of various lines, one of them being interstate pipelines.

Chairman RODINO. We are going to recess until we have answered the call on this record vote. We will be back in 10 minutes.

[Recess.]

Mr. SYNAR [acting chairman]. The subcommittee will come back to order.

We will start questions, and then we will wait until the chairman and Mr. Fish get back to go back to them.

Let me ask this panel a question, if I could. I'm not quite clear why such extraordinary relief is being requested.

You are saying here that we have alleged discrimination which is burdening interstate commerce, and what I would like all three of you to respond to, or one of you on behalf of the panel, is to tell me what is the overriding national interest that justifies such substantial inroads into what I think is the State's right to tax property within its borders?

Mr. COOK. Mr. Chairman, when you say it is the State's right to tax property within its borders, you and I are on the same team; we are not going to have any problem with that at all.

My problem is—and I will use, if I may, unfortunately, but facts are facts—I will use Oklahoma.

Oklahoma, in its determination, has decided that the rate for pipelines—now, that may be intrastate pipelines, but it's also interstate pipelines—shall be assessed at 26 percent of value, and all other commercial and industrial levels of assessment in Oklahoma shall be at 12 percent.

Now, that may be within the jurisdiction of the State legislature of Oklahoma, but if in fact it interferes with the rights under the commerce clause of other users in other States to the extent that it becomes a burden, then I'm not really sure that it comes within the framework of what you and I consider to be States' rights.

The State's right to pass its taxes on to another jurisdiction, for instance, could be quite horrendous if we really look at it, if every State between Oklahoma and New Jersey would decide to indiscriminately increase its rates on interstate pipelines so that by the time the gas got to New Jersey the price would be so prohibitive that nobody in New Jersey could buy it.

Mr. SYNAR. Is that the case today?

Mr. COOK. It could be the case, may I say.

Mr. SYNAR. But is it the case today?

Mr. COOK. No, I don't think it is the case today, Mr. Chairman, but let me give you an example.

Mr. SYNAR. Then I get back to my original question. What alleged discrimination is so burdening on interstate commerce as to call for such an overriding remedy?

Mr. COOK. Oh, it's not an overriding remedy really, Mr. Chairman. We are asking for the right to go into Federal court because we are in interstate commerce to begin with.

Obviously, if we went into Federal court out in Oklahoma, the Oklahoma tax assessing divisions would contend we are totally incorrect. We would have to make our case; they would have to make their case. This is not an automatic removal of discrimination.

Mr. SYNAR. But you have already admitted here, just previously in your question, that you don't consider the present burden——

Mr. COOK. Mr. Chairman, that's not really an admission that this is such an overriding burden that something must be done.

I think that there is a situation that we face right now that you are not looking at really pennies difference between the cost of oil and the cost of gas, you are looking at mills, and if there is to be an influx because of increased demands for State taxes, that this is a subject for taxation, then all of a sudden we'd be coming in here when the burden is 10 times worse.

Mr. SYNAR. All right. Let's get into that.

You say that the reason you need this Federal remedy is because of the States' potential burdening of the interstate commerce. Have the natural gas pipelines sought relief in the State legislatures? Isn't that the appropriate forum?

Mr. COOK. Mr. Chairman, they seek that every year.

Mr. SYNAR. Can you give us some examples of where the natural gas pipelines have sought relief from the States?

Mr. VERKLER. May I interject here? We are regulated by the Federal Government.

Mr. SYNAR. But you are being taxed by the State government. So if you want relief from the "potential burdening oppression of the State taxes," would you not think that the correct forum is the State legislature to get the relief? Have you sought relief?

Mr. VERKLER. Mr. Synar, I think that we are seeking relief from the appropriate body the same way the railroads sought it, the airlines, and the buses, who were discriminated against.

Mr. SYNAR. But didn't several corporations who were opposed to the unitary tax apportionment method on some of the larger States go to the State legislatures to seek relief, and wouldn't this be a kind of parallel example of where you ought to start before you come to the Federal Government and ask for relief? How do you know you can't get relief from the States?

Mr. COOK. Mr. Chairman, I'd like to answer that, because we tried in the Federal Government. We stopped the treaty between the United States and Great Britain for some time, and we finally had hearings before the House and the Senate.

We finally had to get a Presidential committee to study it, and it was through the Treasury and the White House that the demand was made to the States that they had to do something within a given period of time or the Federal Government would seek a legislative route.

We sought the remedy where it should have been resolved, and that was in the name of foreign relations on unitary tax.

Now, as a result of what has happened, we are beginning to get repeals in Oregon, we are beginning to get repeals in Indiana, we are beginning to get repeals from the State of Florida, but that was because the hammer of the Federal Government was over them because of the discrimination.

Right now, there not only is not a remedy——

Mr. SYNAR. Wasn't it true that in that case you had not been successful in the States and that's why you came to the Federal Government?

Mr. COOK. Well, we are still unsuccessful in the State of California.

Mr. SYNAR. I'm asking you right now, have you gone to any State legislatures to seek relief?

Mr. COOK. I'm sure we can give it to you. Let me just say, the real value is \$100 million. If you are saying that that is not a burden—

Mr. SYNAR. Just a second. I'm trying to make a point here. The point is that there are 14 States, supposedly, that are discriminating. You are asking relief that will cover all 50 States.

Mr. COOK. The others do not discriminate.

Mr. SYNAR. Oh, they don't? OK. But you are asking for a broad measure to cover all 50 States when only 14 States are "doing this discrimination."

It seems only logical to me that you ought to seek relief in the States. Now, you are saying, or you have made the accusation here, that you have sought relief from the State legislatures. Could we have some of those examples in any one of those 14 States?

Mr. COOK. I would like to give you for the record, and I'll submit it for the record, and I will find out from all of the clients within the consortium the activities that they pursue every year at the State legislative level.

You have to remember something, Mr. Chairman, and that is that with gas pipelines they do that on a yearly basis in States, whereas with other property they reassess, well, maybe once every 5 or 10 years. With interstate pipelines they assess every year.

Mr. SYNAR. All right.

Mr. COOK. Now, our problem is that we know that our history so far out of certain States is that they seek discrimination, we fight that discrimination, and we have lost.

Mr. McBRIDE. Mr. Chairman, might I just briefly respond?

Mr. SYNAR. Mr. McBride, go ahead.

Mr. McBRIDE. My experience goes back a number of years dealing with railroads, and I suspect, unfortunately, that experience, however, still carries over today. But in States like Tennessee, like Alabama, like Arizona where, after long and very hard court battles, the railroads were able to prove discriminatory taxation, the immediate result in those jurisdictions was not just legislatively but by constitutional amendment to change the Constitution to provide for the very kinds of discrimination that we are talking about today. I can assure you that at those times there were tremendous legislative efforts made by not simply the railroads but all the public utilities not to be put in this class of taxpayers who are least favorably treated.

So I think the experience of classification itself is ample proof, and, as I say, a number of these States which make up this \$100 million do that simply by constitutional and statutory amendment, so that those are ample proof, I think, of legislative effort.

Mr. SYNAR. Let's get into some other areas.

Mr. COOK. Mr. Chairman, let me add one point to that. In the field of political science, we already know through our statistics that there are 14. Now, if it takes us one a year, that's 14 more years that there is a burden on consumers who are going to have to

pay this additional burden. We are not going to get all 14 States in 1 year.

Mr. SYNAR. Mr. Cook, I asked you earlier to show me what the burden was that justified such national——

Mr. COOK. One hundred million dollars, right now.

Mr. SYNAR. One hundred million dollars. We will get into that in a second.

Mr. COOK. The other thing, Mr. Chairman, is that when the case was won in the Supreme Court by *Maryland versus Louisiana*, and Louisiana was denied its 4-percent flowthrough tax, they immediately came up with a constitutional amendment to do exactly what the Supreme Court had knocked down in a different method.

They provided that the interstate gas pipelines would pay the same rate as intra, but if you operated your intrastate business in the State of Louisiana, you could have 10 years freedom from corporate income tax, you could have 5 years of relief from this or from that.

So, in essence, the minute that the pipelines and the consumers won, the State of Louisiana turned right around and intended to do it another way. So I think that's the pattern.

Mr. SYNAR. OK. Let's get into some other things, and if you all could summarize your answers a little bit, we could get a lot more questions asked.

Mr. McBride, you said that you all had tried the State court route, but you gave one of four reasons why you couldn't use that route, because you felt that the State courts would not give a fair hearing and they would decide on limited grounds.

You used the examples of Iowa, and I think maybe you mentioned Oklahoma.

For the record, these cases in Iowa and Oklahoma were resolved on related issues and not specifically about this issue, were they not?

Mr. McBRIDE. I don't know precisely—if you are talking about the pipeline case in Iowa, it certainly had nothing to do with this particular issue.

Mr. SYNAR. That is correct.

So what we are saying here is that we may not have even exercised our basic forums in State courts to resolve this issue yet either, have we?

Mr. McBRIDE. First of all, we don't have any Federal remedy to go into Federal court on.

Mr. SYNAR. You haven't even sought remedies in State courts yet, have you?

Mr. McBRIDE. The pipelines didn't seek the remedy in Oklahoma, but one of the similarly situated public utilities, the McCloud Telephone Co., did and sought to have itself treated like local businesses, and the Oklahoma Supreme Court said——

Mr. SYNAR. But the pipelines—I think the point I am trying to make is that the pipelines have not sought remedies in the State courts in the 14 States, have they?

Mr. McBRIDE. They certainly sought it——

Mr. SYNAR. Just yes or no. Have they?

Mr. McBRIDE. In all 14?

Mr. SYNAR. In any.

Mr. McBRIDE. Yes, sir—Iowa.

Mr. SYNAR. Were the courts in those cases resolving it on this matter or related matters?

Mr. McBRIDE. I don't understand what you mean on this matter, because we don't have a Federal remedy yet. We don't have any Federal cause of action.

Mr. SYNAR. Mr. McBride, now, come on. The question at hand here is whether or not the natural gas pipelines have sought relief in State courts with respect to what they consider the burdening tax responsibility of interstate pipelines. My question to you is, have they sought relief in State courts on that issue?

Mr. McBRIDE. Yes, sir, I believe they did in Iowa.

Mr. SYNAR. And have those courts resolved that matter on that issue, or are those cases being resolved on a variety of other matters?

Mr. McBRIDE. Well, the Iowa case was resolved almost exclusively on a burden of proof issue.

Mr. SYNAR. Burden of proof of what?

Mr. McBRIDE. Whether or not one could prove that what the State assessor did was arbitrary and capricious.

Mr. SYNAR. On this issue?

Mr. McBRIDE. Yes, sir.

Mr. SYNAR. OK. Let me get back to that \$100 million burden, Mr. Cook, that you mentioned.

Can you show us for the record that if we do grant you that relief, or that the States are able to reduce that tax, that that savings would be passed on to consumers?

I think you have a burden of proof to show that the natural gas pipelines would pass that savings on to the consumer, since you are contending it is such a burden now. Can you show that to us?

Mr. Cook. Well, the burden of proof is that we are a federally regulated industry, and those Federal regulators regulate our rates, and they regulate our rates based on what our burden is for the cost of producing and transmitting the gas.

If the \$100 million comes off the bottom line, the burden would then be when we file, which we have to do, and/or on the authority of FERC when these cases are won, if they are won, Mr. Chairman, would be that we would have to show that these savings were realized and therefore the rates would have to be changed.

Now, that is not the case, by the way, in liquid lines. You wanted a distinction between liquids and gaslines. Gaslines are totally regulated by the Federal Government. That is not the case with liquid lines.

So, therefore, if you did in fact add all of the liquid lines—although there are some Federal regulations on liquid lines—but if you did, then you have to impose a legislative burden to do something about it, because basically on the liquid lines they could take the profit and put it in their pocket and not have to report it other than at the bottom line.

Mr. SYNAR. All right. One final question, and then I'll turn it back over to our chairman.

What you are seeking to do with this legislation is to get the interstate pipelines taxation down to at least equal to the intrastate pipelines taxation. However, the language that you are seek-

ing would require that the interstate gas pipelines be taxed like commercial and industrial property.

Mr. COOK. No. All other commercial and industrial property, Mr. Chairman. I'm sorry. We're not looking for parity with intrastate pipelines.

Mr. SYNAR. You want even a better deal than the intrastate—

Mr. COOK. Well, if they are being discriminated against at the State level, Mr. Chairman, that is a problem that the intrastate people have to face, and if they are picking up that additional burden as opposed to all others—

Mr. SYNAR. Let's see if I've got this right. You are being discriminated against because you are higher than intrastate, but you are seeking relief that puts you below intrastate. So now we may, in the near future, have to come back in here and deal with this question of intrastate discrimination.

Mr. COOK. I don't think you can, to be very frank with you, unless you want to impose Federal jurisdiction on totally intrastate. Then that is a question that everybody in Oklahoma would say, "Congressman, that's a real States' rights question."

Mr. SYNAR. Let's get to this. Would you not agree that the interstate tax, if it is to be reduced—if there is an agreement on that—should be no lower than the intrastate rate?

Mr. McBRIDE. No.

Mr. COOK. No. We should be no lower than other commercial and industrial property as it is assessed by the respective States.

Mr. SYNAR. Why should intrastate and interstate be treated—

Mr. COOK. Because we come under the commerce clause of the Constitution.

Mr. SYNAR. OK.

Thank you, Mr. Chairman.

Mr. COOK. Mr. Chairman, if I may, I would like to put in the record a letter from the attorney for the Pacific Gas & Electric Co. of California, who says that this language will not in any way impinge upon the assessment rates of so-called Hinshaw pipelines or intrastate pipelines in California, and that this language would benefit the interstate system throughout the United States, and it would not in any way interfere with the system as it presently exists.

Chairman RODINO. Without objection, it will be accepted for the record.

[The letter follows:]

PACIFIC GAS AND ELECTRIC COMPANY

PG&E

77 BEALE STREET, SAN FRANCISCO, CALIFORNIA 94106
P.O. BOX 7440, SAN FRANCISCO, CALIFORNIA 94110TELEPHONE (415) 781-4200
TELECOPIER (415) 781-7600JOSEPH J. KELLY
ATTORNEY

June 6, 1985

Mr. Richard Nevins
Member, State Board of Equalization
20 E. Foothill Blvd., Suite 205
Arcadia, CA

Dear Mr. Nevins:

As a follow-up to our conversation of last month, I have discussed the proposed amendment to H.R. 2092 concerning taxation of interstate pipelines with members of our Governmental Relations and Tax Departments.

PGandE strongly supports the amendment introduced by Representative Edgar as an effective means of controlling excessive costs from discriminatory local taxation of gas pipeline property--an expense which is borne by our more than three million gas ratepayers.

Currently, PGandE purchases approximately 80 percent of its gas supplies from out-of-state suppliers, including El Paso Natural Gas Company. The price PGandE pays for this gas incorporates, among other things, the excessive tax which these suppliers must pay as a result of discriminatory tax rations imposed by various states. In 1983, for example, ad valorem taxes in Arizona increased the cost of natural gas flowing into California by approximately \$4 million--increase costs which are reflected in higher rates charged to our customers.

Mr. Richard Nevins

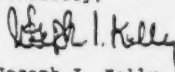
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June 6, 1985

PGandE, therefore, supports the proposed amendment as a needed consumer protection measure.

If you would like additional information on PGandE's position on this amendment, please contact my colleague, Richard Moss, at (415) 972-6341.

Sincerely,



Joseph I. Kelly

JIK:jb

Pacific Gas and Electric Company reviewed the following proposed amendment to section 20 (a)(5) of the Pipeline Safety bill.

(5) "natural gas company" means any person engaged in the transportation of natural gas and interstate commerce and subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act.

We believe that the adoption of this amendment will preclude the use of section 20 by those intrastate natural gas companies now exempted from the Natural Gas Act by the Hinshaw exemption. This should allay the fears expressed by the California State Board of Equalization regarding its authority to assess California intrastate gas pipeline property.

Chairman RODINO. Before I pass on to Mr. Edwards of California for questioning, Mr. McBride, I have one additional question. You made reference in your testimony to a concern with the standard of judicial review. You thought that the State courts actually had too narrow a standard of review in these State tax cases. Is that the sum and substance of your objection to exclusive State court jurisdiction of State property tax cases?

Mr. McBRIDE. That is one of the four objections that we made, Mr. Chairman.

I think that particular objection goes hand in hand with the very first objection, and that is that initially any State tax matter or challenge must be tried before a State administrative agency.

In many instances, that agency is the very same agency who has put the assessment on the taxpayer.

So the centrally assessed taxpayer finds himself almost in an adversarial situation with the initial trier of fact. It is then a narrow scope of review to review that agency action. It's those two things which go hand in hand which cause the problem.

Chairman RODINO. Do you feel then the only resolution is Federal jurisdiction?

Mr. McBRIDE. Yes, sir. We feel that the only appropriate way to actually obtain the relief that this bill, as the railroad bill and as the truckers' bill did, would be to permit access into Federal courts, and, quite frankly, that hasn't been a burden on the Federal courts.

Chairman RODINO. If there were a broader standard of review in the State courts, would that be acceptable to you?

Mr. COOK. How do we get it?

Mr. McBRIDE. If you mean if the pipeline had the opportunity to try de novo in State court, it would certainly be better than the situation that exists now.

I still must say I think the Federal court access for an interstate pipeline is a much better way for the matter to be handled than the State court, but yes, that would certainly be better than something else.

Quite frankly, given the intricacies and the procedural problems involved in State tax appeal matters—

Chairman RODINO. But a de novo review wouldn't accommodate your concerns?

Mr. McBRIDE. A de novo review which genuinely meant a de novo review would be helpful.

Chairman RODINO. Would you expand on what you mean by that.

Mr. McBRIDE. Well, I must say, unfortunately, Mr. Chairman, that I do an awful lot of State work, and there are an awful lot of State statutes which say the State court has the right, de novo, to review the administrative agency.

Chairman RODINO. Then your answer to my question is that you wouldn't find it acceptable to make some changes in the manner in which the State courts expand their standard of review.

Mr. McBRIDE. Quite frankly, I just don't see how that could be accomplished. So I guess the answer is yes, I wouldn't be comfortable.

Mr. COOK. Also, Mr. Chairman, if we accomplished this in one or two States, we'd still have 12 to go, and the burden would be a long, long time.

I would remind you that prior to June 25, 1948, every one of the interstate lines had the right to go into Federal court. It was through enactment of 28 U.S.C. 1341—"The district courts shall not enjoin, suspend, or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy, and efficient remedy may be had in the courts of such State."

Unfortunately, we are not getting a plain and a speedy remedy, and we are getting discrimination.

Chairman RODINO. Mr. Edwards.

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. McBride—and I presume you can answer this question for all of the panelists—would the gas pipeline industry still support this legislation if it exempted States that impose an equal tax burden on intrastate and interstate gas pipelines?

Mr. McBRIDE. I think I can answer that, and the answer is that they would not.

The question is not whether or not intrastate and interstate pipelines are being treated the same. The question is whether or not interstate pipelines are being treated differently than other businesses in the State.

As a practical matter, Mr. Edwards, I suspect that in almost all jurisdictions that would result in the Act doing absolutely nothing, because intrastate pipelines and interstate pipelines are similarly discriminated against by the very nature of their taxation.

Mr. EDWARDS. Very good.

Senator Cook, welcome. It's very nice to see you again.

Mr. COOK. Thank you. Thank you very much, Congressman.

Mr. EDWARDS. Senator Cook, Congressman Glenn Anderson, in his Public Works hearing, asked your colleague, Mr. Robert W. Bailey, if any of the States—and I guess we are talking about the 14 States—had been approached by the industry for the purpose of changing their statutes or practices so as to eliminate this discrimination, and Mr. Bailey said no, that the companies had not gone to the States to ask them to eliminate the discrimination.

Naturally, my question is, why haven't you made some effort to contact these States before coming to Congress?

Mr. COOK. Mr. Edwards, this is a trite answer, and I don't mean it to be, and I really do not intend to be trite.

I think our real problem has been that we have been fighting in State legislatures against an increase in the discrimination and haven't had time to say, "Would you fellas please get us where we want to get?"

We are in the State legislatures of every State every year fighting these assessment ratios. Our fight in Louisiana is almost legion in relation to what it has wanted to do to the consumer at the end of the pipeline.

By the way, in Louisiana they do it in the Constitution, and, as you well know, they almost submitted a proposal to the people of Louisiana where they were going to assess interstate pipelines at 100 percent of value and give a \$75,000 homestead exemption to all property owners in Louisiana.

Now, if you put that on the ballot in Louisiana, nobody is going to vote against it, but the people who are paying the increased rate, as a result of the tax increase, in Tennessee, or Kentucky, or Indiana, or Ohio, or New Jersey don't get to vote in Louisiana.

So, actually, we have been fighting in these legislatures every year.

Mr. EDWARDS. I follow you, but you haven't asked them to change the law, because you feel it wouldn't fly.

Mr. COOK. Well, let me tell you how bad it is in North Carolina. If we were to have the law, we would have every county in North Carolina in the State legislature beating on our chest, because in North Carolina—to show you the big problem—you have to take a rate case in every county in North Carolina before you can get a justifiable State action, and that's almost impossible.

Mr. EDWARDS. Senator, your testimony also points out that your point of view would benefit the average consumer. However, Congressman Anderson asked how much the average consumer would save on an annual basis under your provision. According to the transcript, you responded "that it's going to be pretty insignificant."

Mr. COOK. Yes, sir. Indeed, that's true.

Mr. EDWARDS. So we're not talking about very much money to the average consumer.

Mr. COOK. Because we are talking about \$100 million.

But you are also talking about a tax method that is available to every one of the 50 States.

Mr. EDWARDS. Senator Cook, you gave us a chart, and your chart compares interstate pipelines to other commercial and industrial property. Does the other commercial and industrial property category include agriculture and timber properties?

Mr. COOK. I do not think so. We are talking about commercial and industrial.

Mr. EDWARDS. Now, my reading of your chart indicates that only four States—Arkansas, Iowa, Kansas, and Nebraska—are alleged to discriminate by means other than classifying all utilities, including pipelines, differently than other properties. Is that correct?

Mr. COOK. That is correct.

Mr. EDWARDS. Are my 5 minutes up, Mr. Chairman, or did you give me 3 minutes?

Chairman RODINO. You have 2 more minutes.

Mr. EDWARDS. You will give me two? All right. Thanks.

Mr. COOK. Mr. Chairman, I might make one more response.

Mr. EDWARDS. Sure, Senator.

Mr. COOK. Mr. Edwards, in Mr. Kelly's letter to Mr. Nevins of the State Board of Equalization in California, he states that the Pacific Gas and Electric Company in 1983, for example, paid ad valorem taxes in Arizona that increased the cost of natural gas flowing into California by approximately \$4 million, increased costs which are reflected in higher rates charged to customers.

Mr. SYNAR. Would the gentleman yield on that?

Mr. EDWARDS. Yes, I yield to the gentleman.

Mr. SYNAR. This is the second time you have done that, Mr. Cook. Could you tell us the savings per consumer on these States

that would be gained by reviewing and giving you this power? Could you provide that for the record?

Mr. COOK. In the first place, Mr. Synar, I'd have to go to Kentucky Gas and Electric—I mean Pacific Gas and Electric to find out exactly how many customers they have and exactly how they would allocate that \$4 million.

Mr. SYNAR. I'll tell you what we'll do. We'll leave the record open, and we'll let you all provide how much savings to consumers there would be if this legislation was passed. OK?

[Information in appendix at page 173.]

Mr. COOK. Mr. Synar, I get the feeling that because the number is \$100 million it becomes insignificant. If it were \$100 billion, we might have more attention because the discrimination would be higher.

Discrimination at any level in relation to the value of properties for the purpose of taxation in States is discrimination, regardless of how insignificant or how major it is.

Mr. SYNAR. I don't disagree with that. I just think that if you are being discriminated against, you ought to seek the right forum to get the remedy.

Mr. COOK. We are in interstate commerce, Congressman, and I think under the commerce clause of the Constitution the only way we can seek relief is in the Federal courts.

Mr. EDWARDS. My last question is directed to Mr. McBride.

Mr. McBride, I think you would agree there are two issues involved here, the use of Federal courts to avoid State courts and procedures. That is the first reason. We are trying to get around dealing with these very difficult State legislatures, right? And, two, the statutory definition of what constitutes an unreasonable burden on interstate commerce.

Mr. McBride, would you be satisfied if Congress opened the Federal district courts for allegations of interstate commerce burdens but without changing the traditional standard of proof as to what constitutes an unreasonable burden on interstate commerce?

Mr. McBRIDE. I believe that would provide relatively little relief, Congressman Edwards.

Mr. EDWARDS. So the answer is no, you would not be satisfied?

Mr. McBRIDE. The answer is no.

The Federal legislation, as did the railroad legislation, does two things. No. 1, it provides a cause of action and actually defines what is discrimination; and, No. 2, it provides access to Federal courts.

Mr. EDWARDS. Then would you be satisfied if Congress described what would constitute a burden on interstate commerce but didn't exempt pipelines from the Federal court jurisdictional provisions?

Mr. McBRIDE. I believe it would be most difficult to obtain relief under those circumstances. That is what happened to the airlines, and they are having a terrible time obtaining relief through State courts.

Mr. EDWARDS. Thank you, Mr. Chairman.

Chairman RODINO. We are going to go back to Mr. Fish.

Senator Cook, before you completed your statement, you were attempting to introduce another document into the record?

Mr. COOK. Mr. Chairman, I put it into the record while Congressman Synar was chairing.

Chairman RODINO. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman.

Senator Cook, I believe when I was absent—and I'd like to return to this issue—that you expressed the belief that 28 U.S.C., section 1341, currently discourages suits challenging State tax assessments or rates in Federal court. Suits for injunctive relief could be brought in Federal court only if it could be shown that a plain, speedy, and efficient remedy is not available at the State level.

Do you happen to know, has any pipeline company ever sought Federal court jurisdiction urging that no plain, speedy, or efficient remedy is available?

Mr. COOK. Mr. McBride.

Mr. McBRIDE. I'd be happy to respond to that. I think the answer almost uniformly would be no. There are at least two recent Supreme Court cases—and by recent I mean in the 1980's—the *Fair Assessment in Housing* case and the *Grace Brethren Church* case, both of which, I think, broadened 1341 to such an extent that it would be practically impossible, except where there is a pure procedural bar, to prove that there is not a plain, speedy, and efficient remedy in State courts.

So, as a practical matter, the state of the law is judicially determined now that 1341 operates as almost a complete bar to Federal court jurisdiction.

Mr. FISH. You can't argue the State administrative proceedings are slow and cumbersome?

Mr. McBRIDE. That simply is not a bar under the Supreme Court's interpretation in *Fair Assessment in Housing*.

Mr. FISH. Can you give me a citation?

Mr. McBRIDE. I will be happy to.

[The citation follows:]

Fair Assessment in Real Estate Association, Inc. v. McNary, 454 U.S. 100 (1981).

Mr. FISH. Can I turn now to possible areas where you might consider changes in the amendment?

Section 4(c) provides access to the Federal courts to enforce the nondiscrimination provisions of section 4(b). While this subsection is discussed as an injunctive relief provision, it contains no language limiting the remedy to injunctive relief.

Are suits for damages anticipated, or should 4(c) be clarified so as to limit the remedies solely to injunctive relief?

Mr. McBRIDE. I can simply tell you that my experience in the Federal area with respect to railroads has been that that very same language has been interpreted judicially to mean solely prohibitive relief and that suits for refunds simply have not been countenanced by the Federal courts.

I think there would be no problem in amending that language to make that clear.

Mr. FISH. You would have no objection to a clarification?

Mr. McBRIDE. To a clarification that it was only intended to provide prohibitive relief.

Mr. COOK. I might add, Mr. Fish, we would be perfectly agreeable to limit it to injunctive relief.

Mr. FISH. Thank you, Senator.

Section 4(d) states that it is "the sense of Congress" that any savings should "be passed on to consumers."

Now, if we enact this provision, why shouldn't the Congress mandate that these savings be passed on to the ultimate consumers? Isn't that really Congressman Edgar's intent?

Mr. COOK. That is perfectly agreeable with us.

No. 1, Congress has mandated FERC. Congress has mandated the procedure by which rate cases are filed. If, in the wisdom of this committee, it would adopt this language and provide that FERC will immediately proceed when these cases are adjudicated, then we have no objection to that whatsoever.

Mr. FISH. OK. If I could turn now to the addition to the Edgar amendment, made by Congressman Breaux of Louisiana in the Public Works Committee. Am I correct that the Breaux amendment results in Louisiana not being covered by the section 4 prohibitions?

Mr. COOK. No, sir, it does not. It does not eliminate Louisiana.

Mr. FISH. It does not eliminate Louisiana?

Mr. COOK. No.

Mr. FISH. What does "rate uniformity" in the Breaux amendment mean?

Mr. COOK. The Breaux amendment speaks of tax rate assessments, fair market value applications, and rate uniformity.

The committee report clarified that so that the limitation was broadened, and it must read in conjunction with the requirement of the bill to compare this with other commercial and industrial properties, and that is the best that we can get from it, Mr. Fish.

Mr. FISH. Thank you.

Mr. Chairman, I have a letter, dated June 11, from the Federal Energy Regulatory Commission to our colleague, Mr. Dannemeyer, that goes into some of the areas that I have been speaking about, and I wonder if I could ask unanimous consent to have this placed in the record at this time.

Chairman RODINO. Without objection.

Mr. FISH. Thank you.

[The letter follows:]

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

June 11, 1985

Honorable William E. Dannemeyer
House of Representatives
Washington, D.C. 20515

Dear Mr. Dannemeyer:

Thank you for your letter of June 4, 1985, regarding H.R. 2092 and the rate treatment by this Commission of the state and local property taxes of interstate natural gas pipelines.

State and local property taxes are considered by the Commission as one element in the overall examination of a natural gas pipeline's costs and revenues, which it performs under the ratemaking authority of sections 4 and 5 of the Natural Gas Act (NGA). Under section 4 of the NGA, a pipeline may file for a rate increase based upon a study of actual costs, including taxes and revenues. This study must be filed in support of the proposed increase. Under section 5 of the NGA, the Commission may investigate the existing rates of a pipeline, and set the just and reasonable rate; however, the effect of a rate change under section 5 can only be prospective.

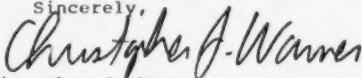
Section 4 of H.R. 2092 permits access to Federal court for claims of discrimination related to assessment or collection of state and local property taxes from natural gas pipelines. Such discrimination might take the form of collecting an ad valorem tax on natural gas transmission property at a tax rate in excess of the tax rate applicable to commercial or industrial property. Section 4(d) of H.R. 2092 expresses the sense of Congress that any savings from relief granted by courts from this form of discrimination should be passed on to the ultimate consumers of natural gas.

Only the actual property taxes of a pipeline would be considered in the establishment of the rates of a pipeline under sections 4 and 5 of the NGA. Tax relief under H.R. 2092 would generally be reflected in rates when a pipeline files a rate case that includes a different level of tax liability. If a pipeline realizes property tax relief under the new law, it would be considered along with other costs and revenues and reflected in pipeline rates as of the effective date of a new rate filed under section 4 of the NGA. If a pipeline does

not file a rate case within a reasonable time under section 4 of the NGA, then any new level of property tax liability could then be established in a section 5 proceeding where rates are set for prospective application. The Commission has the responsibility to initiate such a proceeding if it is considered in the public interest.

If I can be of further assistance in this or any other Commission matter, please let me know.

Sincerely,



Christopher J. Warner
Associate General Counsel
Legislation, Regulation and
Congressional Affairs

Chairman RODINO. Mr. Hughes.

Mr. HUGHES. Thank you, Mr. Chairman.

I, too, want to welcome the panel.

A lot of the questions that I have already been asked, and you have responded. The one area where I still have some concern is over the question of discrimination—what is discrimination—and I'm not sure that I really am satisfied with some of the responses I have received today.

Generally, in the field of taxation, discrimination is the systematic treatment of the same or essentially similar property in a clearly disparate way. It's not the segregation generally of different property or users of similar property into different classification. I think that's generally accepted as an index of discrimination.

If I understand the legislation correctly, what the bill would do, in essence, is give interstate pipelines not equity but a classification that sets them apart from other interstate carriers—telephone companies, electric companies, oil pipelines. I would just like to hear your response to that.

Mr. Cook. My only response to that, and I think the only one that I could pick out of there, and say that it probably does exist, would be with liquid lines, because they are not included in the language of this.

If it is the wisdom of this committee to include liquid lines, then that is fine. They are not under the regulatory aegis that interstate pipelines are. They are not treated the same regulatorily. They do not put any rates into a base when they make application for a rate increase or for a cost of gas. Therefore, whatever their regulation is, liquid lines are not subject to the same Federal jurisdiction and Federal requirements that interstate gas pipelines are.

When you are talking about electric companies and telephone companies, they are so intrastate in nature, Congressman, that all of the rules and regulations that apply to them are at the State regulatory level. The telephone companies all go to the State capitol to get their rates increased. The consumers go to get them decreased. The consumers all are within a given rate area.

Our situation on interstate pipelines is that we may have not one customer in the respective State other than to flow the gas through that State.

So the regulatory process in utilities—that is, electric companies and telephone companies—is specifically intra in nature and regulated by the respective States. That is not the case, and should not be the case, in interstate pipelines which should be regulated under the aegis of the commerce clause of the Constitution.

Mr. HUGHES. How would you differentiate between oil and gas pipelines on interstate?

Mr. COOK. It would be difficult to differentiate, to be frank, other than the regulatory aspect. The regulatory aspect of gas pipelines basically is that it's a consumer-oriented gas system that ultimately gets to a system whereby it is sold to the city of Memphis, or the city of Boston, or the city of Trenton, NJ, or New York City, or Albany, or whatever the case may be, or anywhere in Kansas.

The question there is: Is it the same for liquid lines? Liquid lines basically go from a point to a terminal and then go to a refinery. They do not have a regulated rate.

However, may I say, they should not be discriminated against as far as property is concerned in industrial and commercial property as it passes through a State.

Mr. HUGHES. What you are saying is, oil pipelines should not be treated differently for tax purposes because of Federal regulation, aside from the issue of the impact upon interstate commerce.

Mr. COOK. Congressman, the only caveat that I would make to that is, we had long discussions with the liquid line people to join us in this amendment. They were requested to come in. We requested that they provide all of the statistics that we were prepared to present to Congress. We gave them months, and months, and months in which to do that, and their basic general organization agreed not to become a part and not to participate in this amendment.

Mr. HUGHES. Aside from the fact that you are talking about a different product—liquid as opposed to nonliquid carried in the pipelines—are there any other differences that you can envision between your situation and that of oil pipelines?

Mr. COOK. Relative to assessment, Congressman, I have to say they should not be any different.

Now, I think you are in trouble when you get to utilities in the electric field and in the telephone field, because I think they are, ratewise, regulated at the State level.

Mr. HUGHES. I wouldn't think that they would be any less concerned about discrimination than you folks.

Mr. COOK. They should not be.

Mr. HUGHES. Then how can you account for the fact that they're not present at counsel table?

Mr. COOK. I suspect that they fight those things out all on a regulatory and rate basis at the State levels on a daily basis.

Mr. HUGHES. I imagine they have the same problems with the State regulatory agencies as you folks do.

Mr. VERKLER. If I can interject, we are not regulated at the State level.

As Senator Cook has pointed out, since 1938, Congress, with the passage of the Natural Gas Act, has decided that natural gas pipelines are effected with the public interest, and we are regulated by the Federal Government.

Oil pipelines are common carriers. Natural gas pipelines are not common carriers, and that is another difference.

As Senator Cook pointed out, we are against discrimination wherever it exists, and if they are discriminated against, we think that's wrong. But we have been working on this case involving the natural gas pipelines and our consumers.

Mr. HUGHES. There is no question but that there is a distinction between interstate oil pipelines and interstate gas pipelines. But is it a distinction without a difference, really, in the final analysis? The impact is the same.

Mr. VERKLER. On this issue, it may very well be.

Mr. HUGHES. I hear what you say about invoking congressional oversight and a Federal response, but in the other situations we have talked about—interstate, intrastate pipelines—there is still an impact upon consumers and interstate commerce.

Mr. Cook. It's not an overview, Congressman. They tell us what our rate must be. It's more than an overview. They tell us what we may charge per million cubic feet for gas. It's not an overview. It's far more serious than an overview.

As a matter of fact, we find ourselves in a quandary because FERC now tells us at the hearing level that if we don't actively participate at the State level to fight every one of these things, to continually exercise whatever clout we have at the State level to fight, to fight, to fight, they're not going to allow us a rate increase because there has been a massive increase in taxes in State A, or B, or C. So they have got us betwixt and between.

Mr. HUGHES. I understand.

Well, thank you very much. I appreciate the colloquy.

Thank you, Mr. Chairman.

Chairman RODINO. Mr. Glickman.

Mr. GLICKMAN. Thank you, Mr. Chairman.

I would like to ask Mr. Cook if he would respond to a letter I received from my Governor in Kansas, Governor Carlin. I'll read one and a half paragraphs:

Even more alarming is the relief which would be granted should this legislation be enacted. Under its terms, the level of assessment of natural gas transmission property would be equalized to the level of assessment of other commercial and industrial property. However, the definition of "commercial and industrial property" in no way resembles the definition of the same property in the 4-R Act. As proposed, the bill would exclude from the definition of "commercial and industrial property" all minerals and public utility property, both of which are presently considered in determining the approximate level of assessment of rail transportation property. The end result of such an exclusion will mean that the pipeline companies will enjoy a reduction in their ad valorem taxes while producing oil and gas properties and public utilities, along with other property owners, will have their ad valorem taxes increased as a result of the resultant tax shift.

[Letter in appendix at page 158.]

If that is true, then you are not being treated unfairly, you're being treated preferentially in this bill, in comparison with other carriers. I would like you to respond to that.

Mr. COOK. Congressman, my first answer is that minerals and utilities has been dropped from the language of the amendment.

Mr. GLICKMAN. OK.

Mr. COOK. Therefore, it puts it on a basis and a par with the assessment of other commercial or business properties.

Mr. GLICKMAN. OK.

Now, the second point is that the Governor of Kansas expresses the view that this bill will increase the burden of taxation on the consumers of the State. In the State of Kansas, according to your evidence, Mr. Cook, it's nearly \$14 million.

The Governor is concerned, at a time when we are seeing rapidly rising utility rates in the State for the average consumer, that you're getting this kind of preferential treatment, which will result in about a 5-percent increase in the total taxes paid by citizens of the State of Kansas.

Mr. COOK. I'm not quite sure, if I were Governor of Kansas, that I would treat it that way.

I think that if there is discrimination, and the discrimination amounts to that amount of money, then I think what you would do is that you would take other intrastate lines in the State of Kansas, and you would take other utilities in the State of Kansas, and it would probably take a 1 or 2 mils up and a 1 or 2 mils down. And you would have the same amount of money, and you would have no problems whatsoever.

But you would be sharing the burden, because the State of Kansas does, in fact, discriminate against consumers of gas at the end of the pipeline in another State, because they are paying your taxes as a result of the rate on interstate gas pipelines going through Kansas, as opposed to other commercial and business properties within the State of Kansas.

Mr. GLICKMAN. Yes, but Kansas treats its intrastate and interstate pipelines the same way, as I understand it. So that means that we would have to have a tax increase in order to pay for the preferential treatment.

Mr. COOK. You would probably have a rate increase.

Mr. GLICKMAN. A mil increase is what we would have.

Mr. COOK. Sure. Well, somebody somewhere in the United States would get a mil decrease because of the discrimination that occurs in Kansas.

Mr. GLICKMAN. That's fine, but I don't represent those people.

Mr. COOK. May I say to you, Congressman, I don't disagree at all, but it's the chairman's people in the State of New Jersey that are going to pick it up, because they are paying more for gas than somebody—as a matter of fact, they may be paying more for gas there than somebody in Kansas.

Mr. GLICKMAN. OK. Let me ask you the second question which is the philosophical question of interference with the State's authority to tax.

The States are really afraid, in a period of declining financial resources and a possible tax bill that will eliminate the ability to deduct State and local taxes against the Federal system, that this is really a first step in an era of eliminating their ability to tax any kind of property that might move through interstate commerce, because every item of property moves through interstate commerce.

Do you want to comment on that?

Mr. McBRIDE. Let me just comment very briefly, Mr. Glickman.

First of all, this bill would have absolutely no effect on the power of the State of Kansas to tax interstate pipelines any way they chose to do so, if they didn't treat them differently than they were treating the local businesses in the State, the people who have the right to vote and make sure that they are treated fairly. So this is not in any way a diminution of the power of the State of Kansas to tax.

Mr. GLICKMAN. Now, wait a second. That's an Orwellian answer, because the fact of the matter is, it doesn't affect the power of the State of Kansas to tax as long as it keeps its rates at a certain level.

You are saying as long as its rate is not above a certain level, it can tax.

Mr. COOK. Oh, no. No, no, no. Level has nothing to do with it, Congressman, as long as everybody is treated the same. Not level at all.

By the way, you don't have to take that \$14 million and just apply it to people who use gas. You can take that \$14 million, and that one mil can go to the plant out on the plains, it can go to the oil refinery on the other side of Topeka, it can go to all of the plants all over the whole State, and when you take that one mil, you've picked up \$14 million, and you've raised everybody a smidgen.

As a matter of fact, you bring the pipelines down, but you don't bring them down that much if you don't want to.

Mr. GLICKMAN. But you are still capping the maximum that they can charge. Is that correct?

Mr. COOK. You can raise everybody higher, if you want to.

Mr. GLICKMAN. So you wouldn't object if the State raised their commercial and industrial millage significantly in order to deal with this issue then?

Mr. McBRIDE. This bill wouldn't give any protection at all. As long as the interstate pipeline is treated the same as locally assessed commercial and industrial businesses, the State can—

Mr. COOK. We don't care.

Mr. McBRIDE. Well, within reason, as long as it doesn't violate the Constitution.

Mr. COOK. As a matter of fact, we, even in the amendment, say there can be a 5-percent differentiation. So we are giving you a 5-percent kick.

Mr. GLICKMAN. OK. Thank you, Mr. Chairman.

Mr. HUGHES. Would the gentleman yield?

Mr. GLICKMAN. I yield.

Mr. HUGHES. I ask unanimous consent that the gentleman have 1 additional minute.

Chairman RODINO. Without objection.

Mr. HUGHES. Will the gentleman yield to me?

Mr. GLICKMAN. I will be glad to yield.

Mr. HUGHES. I apologize. I wasn't here earlier. Is there any evidence that the States are discriminating against you vis-a-vis intrastate carriers?

Mr. McBRIDE. No.

Mr. HUGHES. Do you question the right of States to set up reasonable classifications that differentiate between commercial uses—let's say an IBM that has an outlet, as opposed to a carrier?

Mr. COOK. This committee passed out the 4-R Act and said that railroads were being discriminated against in the respective States throughout the United States, not as against other railroads, but as against all other properties.

Mr. HUGHES. You are not answering my question. Do you challenge the right of the States to set up classifications based upon a whole host of factors as a reasonable way of taxing? Can't these classifications be based upon whether or not its use is commercial, light industrial, industrial? Are you challenging the right of States to do that?

Mr. COOK. No, no, no, no, no. Congressman, we don't challenge that at all.

Mr. HUGHES. Then I don't understand your argument.

Mr. COOK. We don't challenge that at all.

Mr. HUGHES. Where is the discrimination then?

Mr. COOK. We challenge the fact that one particular State, for instance, taxes interstate pipelines at 100 percent of value and all other business and commercial properties at 65 percent of value.

Mr. HUGHES. Where is the discrimination? Where is the discrimination if, in fact, a State does not discriminate within that classification?

Mr. COOK. May I say, the discrimination is that you have made gas pipelines a classification exclusively and solely, and that's not a classification for tax purposes, for business purposes.

Mr. HUGHES. Who says it's not a proper classification?

Mr. COOK. I think it's the history of Congress. The Congress passed the 4-R Act for railroads, they passed the act for trucks, they passed the act for buses, they passed the act for airlines, and they said that you shall not discriminate against all of those industries in relation to your other business and commercial property so that their cost to do business in your State is higher than the cost of other businesses to do business.

Now, you are saying that the States should have said classify railroads as a distinct classification, classify airlines as a distinct classification, classify bus companies, classify trucking companies. But Congress did not do that. Congress said you're discriminating against all of those, and it has passed laws to fix that.

Mr. HUGHES. We are not talking about trucking companies, we are not talking about railroads, we are talking about a classification that would include all—

Mr. COOK. But they would be classifications.

Mr. HUGHES [continuing]. Interstate or intrastate pipeline carriers. Is that a reasonable classification, in your judgment?

Mr. COOK. It is not.

Mr. HUGHES. Well, I guess that answers the question.

Mr. COOK. Because the consumers in other parts of the country are picking up that tax burden as opposed to the tax burden that's being imposed on people in those States.

Mr. HUGHES. I asked the question before about classification because I didn't understand what you envision as discrimination. It's my view that if a State sets up a reasonable classification—and the

emphasis is on "reasonable"—and all the users are treated in the same fashion, then there's an absence of discrimination.

So the question is, what is a reasonable classification?

Mr. COOK. My point—and you threw me off when I mentioned railroads, and airlines, and buses, and trucks—you made a specific exemption to all of those, and you didn't classify them within a State and say a State had a right to do nothing but classify trucking companies.

Mr. HUGHES. But you see, I envision that a State has a right to say there's a difference between an interstate or intrastate pipeline carrying oil or natural gas and a property with a light industrial use—

Mr. COOK. Oh, I agree.

Mr. HUGHES [continuing]. Or a commercial use. If I understand you correctly, you have a problem with whether it is reasonable to put interstate or intrastate pipelines within one classification and then tax them in one fashion.

Mr. COOK. I think I would agree with your phrase "reasonable." If it were done in a reasonable fashion, then I think that would be proper classification.

Mr. HUGHES. Well, I am way beyond my 1 minute.

Thank you very much.

Mr. McBRIDE. May I just respond very briefly?

You are precisely correct, Mr. Hughes, that from a constitutional standpoint, the States have all sorts of power to classify.

Mr. COOK. Absolutely.

Mr. McBRIDE. There is no question about that.

What the prior Federal legislation has done with respect to other types of interstate businesses—the railroads, the trucks, the airlines, and the buses—has simply said, "We're not going to affect your right to classify, except when you do classify, you've got to treat railroads like other businesses; you have to treat airlines like other businesses;" and that's all this bill says.

You can't put interstate gas pipelines in a separate classification or in a classification which you treat differently than other businesses. Except for that, it leaves the right to classify completely undisturbed.

Mr. HUGHES. Mr. Chairman, I don't want to leave the impression—

Chairman RODINO. We are going to move on, Bill. I think we have talked on that particular phase of that issue at length.

Mr. Feighan.

Mr. FEIGHAN. Thank you, Mr. Chairman.

I also apologize. I was unable to hear your testimony, and perhaps you have addressed this question, and in many ways it's a spinoff of exactly what Congressman Hughes was referring to.

Perhaps your argument is valid that there is currently dramatic discrimination in taxation for interstate pipelines, but wouldn't passage of this legislation ensure that there will be even perhaps more dramatic discrimination with like property, similar property, whether between interstate pipelines, intrastate pipelines, other forms of utility property that are similar but will be treated on a State-by-State basis quite dramatically different and in a much more complex discriminatory fashion than exists today?

Mr. McBRIDE. I think the discrimination clearly exists with respect to all of those different types of properties. I think there is no question about that.

The protection afforded to the interstate gas pipeline would not change or affect that discrimination which exists with respect to those other types of properties. You are correct in that analysis.

What has happened is that Congress has seen fit to do this on a piecemeal basis. It has taken it industry by industry. The same thing that you are saying would have applied with equal force when the railroad bill was passed.

Mr. Cook. I was going to say, Congressman, the answer to your question is no, it's not going to cause a great big tremendous burden, unless somebody can say that passage of the 4-R Act, passage of the trucking bill, passage of the bus bill, or passage of the airline bill, has totally disrupted the methods of assessment in Kansas and Oklahoma and the other States. It has not. It has not, and it hasn't caused havoc. What it has really done, it has created a state of uniformity.

Mr. FEIGHAN. I appreciate your response. Thank you.

Thank you, Mr. Chairman. That's all.

Chairman RODINO. Thank you very much. That concludes the testimony of this panel.

I would merely like to advise the panelists that the committee would probably be in touch with you with written questions which we hope you would respond to.

I thank you very much.

Mr. McBRIDE. Thank you, Mr. Chairman.

Mr. VERKLER. Thank you.

Mr. Cook. Thank you, Mr. Chairman.

Chairman RODINO. Our next panel consists of Ms. Carol Bonebrake, Ms. Donna Cox, Mr. James J. Delaney, and Mr. Barry Roth. We will hear from you first, Ms. Bonebrake.

Ms. Bonebrake is director of taxation of the department of revenue in the State of Kansas.

I would just advise the witnesses that, in view of the fact that we are under time constraints, you will please limit your oral testimony to 5 minutes. We will accept your written statements for inclusion in the record in their entirety.

TESTIMONY OF CAROL BONEBRAKE, DIRECTOR OF TAXATION, KANSAS DEPARTMENT OF REVENUE; DONNA COX, DEPUTY GENERAL COUNSEL, OKLAHOMA TAX COMMISSION; JAMES J. DELANEY, CHIEF COUNSEL, CALIFORNIA BOARD OF EQUALIZATION; AND BARRY ROTH, STAFF VICE PRESIDENT, THE WILLIAMS COMPANIES

Ms. BONEBRAKE. Thank you, Mr. Chairman, for accepting my written statement into the record.

Basically, I would like to keep my remarks very short. I think that there are some things that need to be clarified, particularly as to the State of Kansas.

First, I would like you all to look at the statistics that were attached to Senator Cook's statement. In that, Kansas has been classified as a discriminating State, and it maintains that the level of

assessment of other commercial and industrial property in the State of Kansas is 12 percent, while the pipeline industry is assessed at 30 percent.

While the committee repeatedly asked what these statistics represented, I don't believe you ever got a very good answer to your questions. I would like to tell you what this 12 percent represents.

This is the level of assessment of the local convenience grocery store. It is commercial and industrial real estate in the State of Kansas. Excluded from the 12 percent is all oil and gas in the State of Kansas, which makes up 35 percent of the commercial and industrial tax base.

Oil and gas in the State of Kansas is subject to ad valorem tax, and it is taxed each and every year at the statutory rate of 30 percent. The 12 percent excludes all other public utilities which also are reappraised each and every year in the State of Kansas and are taxed at the statutory 30 percent. The 12 percent excludes all other commercial and industrial personal property in the State of Kansas which is taxed each and every year at the statutory 30 percent.

The 12-percent figure is quite unusual in that this figure was what was used by the railroads in the 4-R litigation which went on for 4 years in the State of Kansas. The 12 percent was specifically rejected by the Tenth Circuit Court of Appeals as being an incorrect interpretation of the 4-R Act at 49 U.S.C. 11503.

Mr. McBride, as counsel of record in those cases, could have answered the question, because he knew what this level of assessment represented. It represents the local convenience grocery store's real estate which, in the State of Kansas, has not been reappraised. The legislature this year has enacted a bill of statewide reappraisal to bring real estate up to the statutory level.

It is also particularly telling when you look at the composition of the property of the pipeline. According to the FERC reports, pipelines' total investment in real estate is 5 percent; 95 percent of their total investment is personal property.

The 4-R Act for railroads, as it has been interpreted by the various courts, requires that you compare the level of assessment of personal property with other commercial and industrial personal property and the level of assessment of railroads' real estate with other commercial and industrial real estate.

Given the 5-percent deviation, there is no discrimination against any type of pipeline in the State of Kansas because they are personal property and they are taxed like all other personal property in the State of Kansas.

The State of Kansas also disagrees violently with the assertion that it requires a multiplicity of suits to litigate your taxes in the State of Kansas.

One of my colleagues on the panel represents Williams Pipeline, which has very successfully litigated in the State of Kansas in State court, and I think he will tell you a little more about that.

Finally, I would say that we do not believe in the State of Kansas that there will be any significant saving to the consumer. In fact, what this bill will do, it will end up making Kansas' consumers pay a higher tax on the gas that they receive than the out-of-State consumers pay for the Kansas gas which has been severed from our ground.

If Congress wants to look into the area of discriminatory payments by consumers in other jurisdictions, the State of Kansas would suggest that FERC be made to investigate. We in the State of Kansas are very aware that there are things that are passed on to the consumer as part of total investment in plant and service which have no relationship to the pipeline company itself.

Quite recently, Panhandle Eastern Pipeline Co. built a new country club in the State of Kansas. Consumers out of State are paying for that country club as part of the FERC rate base.

I thank you for the opportunity to be here.

[The statement of Ms. Bonebrake follows:]

STATEMENT OF CAROL B. BONEBRAKE

My name is Carol B. Bonebrake, Director of Taxation of the State of Kansas. I am appearing on behalf of the State of Kansas to oppose the amendment contained in H.R. 2092 which would prohibit discriminatory state taxation of natural gas pipeline companies and provide access to the federal courts to seek relief.

The State of Kansas is well acquainted with the Federal Acts which prohibit discriminatory state taxation of the interstate railroads (49 USC §11503) and the interstate motor carriers (49 USC §11503a); since 1980, I have represented the State of Kansas in litigation brought by the eleven interstate railroads and the interstate motor carriers.¹ During the four years that the railroad litigation was pending, four appeals were taken to the Tenth Circuit Court of Appeals; during this same period more than 30 million dollars were withheld by the Railroads from the local county governments and school districts. When that litigation was ultimately settled in

1. The following decisions outline and describe the complexity of the 4-R litigation in Kansas: Atchison Topeka and Santa Fe R. Co. v. Lennen, 640 F2d 255 (10th Cir. 1981); Atchison Topeka and Santa Fe R. Co. v. Lennen, 531 F Supp. 220 (D. Kan. 1981) aff'd 10th Cir. unpublished opinion; Atchison Topeka and Santa Fe v. Lennen, 552 F Supp. 1031 (D.Kan. 1982) aff'd in part, rev'd in part, 732 F2d 1495 (10th Cir. 1984); Burlington Northern R. Co. v. Lennen, 573 F Supp. 1155 (D.Kan. 1982), aff'd, 715 F2d 494 (10th Cir. 1983), cert denied, 104 S. Ct. 2690, 81 L.Ed 2d 884 (1984). The Kansas Motor Carrier litigation, Arkansas - Best Freight System, Inc. et al v. Department of Revenue, Case No. 82-4003, commenced by 14 interstate motor carriers is still pending before the District Court.

October, 1984, the Railroads paid in excess of 24 million dollars of withheld taxes to the local units of government. Cost in time and dollars expended to recover that which was withheld from the State of Kansas under the guise of discriminatory state taxation was substantial, to say the least. Had the Railroads been required to utilize the appellate procedure applicable to every other taxpayer in the State of Kansas, the local units of government and school districts would not have been forced to do without that 24 million dollars which was rightfully theirs. Before Congress enacts legislation which would extend the "4-R" type of anti-discriminatory taxation protection to interstate natural gas transmission properties, the State of Kansas believes it must carefully consider the impact that this type of legislation has on 1) local units of government striving to provide and maintain essential services; and 2) other similar taxpayers situated within a state, be they inter- or intrastate. Finally, Congress must consider whether reasonable grounds exist for such an intrusion into matters of state taxation.

As proposed, H.R. 2092 would prohibit the taxation of natural gas transmission properties at a higher ratio of assessed to true market value than other commercial and industrial property within the assessment jurisdiction. The comparison mandated is complicated by the great differences in the initial valuation process of the properties involved. In Kansas, as in most states, the pipeline, railroad, telephone, and electric companies are valued for ad valorem purposes at the state level. The valuation process of a state assessed property involves a unit valuation where the entire

operating property of a company, wherever located, is valued utilizing cost, stock and debt, and income approaches. The Division of Property Valuation, the state agency responsible for the valuation process in Kansas, allocates a portion of system value to the State and then distributes that portion of value to various Kansas counties in which the property is physically located.

In contrast, commercial and industrial properties, both real and personal, which do not cross state lines are valued locally by the county appraiser of the county in which the property is located. In Kansas, all personal property is annually reappraised using valuation manuals developed by the Division of Property Valuation. Typically, these manuals are based upon market prices of individual items of property. While commercial and industrial real estate has not been reappraised annually, the Kansas Legislature, during its 1985 Session, enacted a bill mandating statewide reappraisal.

In 1984, commercial and industrial personal property, which includes oil and gas production, accounted for 51.5% of the total commercial and industrial valuation base statewide, while public utility property made up 33% of that base. Commercial and industrial real estate represented only 15.5% of that base.

THE "PROOF" OF DISCRIMINATION IS INSUFFICIENT AND MISLEADING

Given the brief synopsis of the ad valorem procedure in Kansas, the first consideration for Congress is whether evidence of discriminatory state taxation exists. Despite the fact that commercial and industrial real estate accounts for a very small portion of all

commercial and industrial property, it is ironic that only the level of assessment of commercial and industrial real estate has been presented to support the railroads' and pipelines' claims of discriminatory state taxation.² Typically pipeline companies have little investment in real estate; most of their value (approximately 95%) relates to the vast amounts of personal property required to transport the natural gas.³ Despite the fact that pipelines have huge investments in personal property, the "proof of discriminatory state taxation in Kansas" presented to Congress by the natural gas pipelines compares their property, both real and personal, to commercial and industrial real estate only. See Hearing Before The Subcommittee on Surface Transportation, Senate Hearing 98-1165 September 28, 1984 at p. 25. Had a valid comparison been made, the pipelines would have been claiming little, if any, discriminatory taxes in the State of Kansas. The comparison proffered by the pipelines is even more unusual since it is expressly contrary to that mandated by both the 10th Circuit Court of Appeals, Atchison

2. In some instances, it must be granted that the tax values of commercial and industrial real estate have not kept pace with inflation and other market changes. However, so-called discriminatory state taxation is not cured by lowering the level of assessment of natural gas pipelines to the lowest possible denominator; such a result simply creates more discrimination.

3. According to the 1984 filings of the major Kansas natural gas transmission pipelines with the Federal Energy Regulatory Commission, the percent of investment in land, buildings, and right of way as compared to total plant in service averaged 5.6%.

Topeka and Santa Fe Railway Company, v. Lennen, 732 F2d 1495 (10th Cir. 1984) and the 4th Circuit Court of Appeals, Clinchfield R.R. v. Lynch, 700 F2d 126 (4th Cir. 1983). If Congress approves such "proof" as demonstrating discriminatory taxation, it will have granted the pipelines a lesser burden of proof than required of women and other minorities in Civil Rights legislation.

**THE PROPOSED LEGISLATION DENIES EQUAL PROTECTION WHILE
GRANTING INTERSTATE PIPELINES FAVORED STATUS**

A related consideration which has been virtually ignored by the natural gas pipelines is the extent to which such special interest legislation results in a denial of equal protection through a federally mandated subclassification of property. In 1985, there were 105 pipeline companies doing business in Kansas. Of that group of 105 pipelines, only eleven (11) companies conceivably would be entitled to seek relief under the proposed legislation; the remainder of the group would be excluded because they 1) carry products other than natural gas, 2) are not classified as natural gas transmission lines or 3) are intra- rather than interstate carriers. See Schedule I for the interstate natural gas transmission pipelines and Schedule II for the other pipelines. Today the State of Kansas taxes all pipelines inter- and intra- (as well as other commercial and industrial personal property and public utilities) the same. However, if the proposed legislation is enacted, that group of eleven will be able to obtain a reduction in their taxes while the other 94 will not. A similar concern about unequal treatment of inter- and intrastate motor

carriers lead the federal courts in Arkansas, Kansas and North Carolina to deny tax relief under the Motor Carrier Act, 49 USC §11503a. See for example, Arkansas - Best Freight System v. Lynch, No. 81-1044 - CIV-5 (E.D. N.C. February 18, 1982) aff'd 723 F2d 365 (4th Cir. 1983) and Arkansas - Best Freight Systems, Inc. v. Department of Revenue, No. 82-4003 (D. Kan. June 18, 1982).

Furthermore, just because they are interstate carriers, natural gas transmission pipelines, under the proposed bill, will be afforded the right to go into Federal Court; all other taxpayers, be they individuals or interstate or intrastate companies, will be required to follow the statutory procedure devised by the Kansas legislature in order to protest their taxes. None of the "horror stories" told by the pipelines about multiplicity of suits are true in Kansas. The appellate procedure crafted by the Kansas legislature does not involve a multiplicity of suits; it involves an appeal to the Kansas Board of Tax Appeals whose decision is subject to direct review by the Kansas Court of Appeals. See K.S.A. 74-2437, 74-2426, and 79-2005. The ease with which all taxpayers may challenge their assessments is amply demonstrated by the number of appeals taken by the pipelines within the past ten years.⁴ Not only will the proposed legislation provide an additional forum to these interstate taxpayers, it will also entitle them to relief not available to other

4. During this period, twelve appeals have been filed by various Kansas pipelines. Of those twelve appeals, eight resulted in relief to the taxpayer.

taxpayers. The bill before you will allow the eleven interstate natural gas transmission pipelines in Kansas to withhold, pursuant to a court ordered injunction, those tax dollars they claim are discriminatory, while the other 94 pipelines and all other Kansas taxpayers lose the use of their tax dollars in controversy during the pendency of litigation. Based upon the so-called proof offered to Congress, these eleven pipelines will claim that they should be equalized and taxed at the same level as the "Mom and Pop" corner grocery store. This legislation will, therefore, give an economic advantage to the special group of interstate taxpayers not enjoyed by other inter- and intrastate taxpayers; this was one of the reasons that Congress enacted 28 USC §1341, the Anti-Injunction Statute.⁵

THE PROPOSED LEGISLATION LACKS A RATIONAL BASIS

The proposed designation of natural gas pipelines as being a preferred class of taxpayers does not appear to rest upon any rational basis other than "you did it for the railroads - we want it too". Congress considered the Railroad anti-discriminatory tax provision for a period in excess of fifteen years; that legislation was enacted as portion of Railroad Revitalization and Regulatory Reform

5. See 81 Cong. Reg. 1415 (1937) for the remarks of Senator Boone in support of the Anti-Injunction Act which prohibited interstate taxpayers from utilizing diversity jurisdiction and federal injunctive relief in order to avoid the procedures and relief available to intrastate taxpayers.

Act, a comprehensive piece of legislation to address the complex problems arising from the bankruptcies of numerous railroads along the northeast corridor. An examination of the Records of the two Senate hearings conducted on the pipeline bill are unique in that the only legitimate reason articulated in support of this legislation is that consumers might benefit from any rate reduction.⁶ The "might" is, however, dependent upon the natural gas company filing a request for a rate reduction with the Federal Energy Regulatory Commission. See Senate Hearing 98-1165, September 28, 1984 at p. 11. The "might" is also dependent upon that which occurs in the assessment jurisdiction when the natural gas pipelines are granted a tax break, as is illustrated in the following example.

In Kansas, natural gas transmission pipelines are obviously located in areas where natural gas is produced. A reduction in the taxes paid by the natural gas transmission pipelines in those gas producing counties will simply shift the burden of taxation to other properties located in those counties (such as homes, farms, and natural gas) which are not accorded the same Federal protection by way of an increase in the mill rate. Since the natural gas itself is

6. Increased corporate profits and stockholder dividends were also mentioned. The State of Kansas does not believe that increased corporate profit is a legitimate basis to distinguish between interstate and intrastate pipelines. The State of Kansas believes the instrumentalities in interstate commerce should pay their fair share.

subject to ad valorem taxes, an increase in the mill rate will result in an increase in the amount of ad valorem taxes paid by the producers of the natural gas. Since the natural gas is taxed at the same assessment level and rate as the natural gas pipeline was, the end result of any reduction in the taxes paid by the pipeline will be an increase in the taxes on the natural gas itself. Since the Federal Energy Regulatory Commission allows the producers of natural gas to recover the ad valorem taxes paid from the ultimate user (E.P.C. Opinion No. 699 D), the end result of this legislation is to simply shift the burden of taxation from the "mode" of transportation (the pipeline) to the "product" (the gas) ultimately transported. Since the consumer buys the product, little, if any, savings will result. If the consumer lives in an area where a benefitted pipeline is located, any savings may be negated by the resulting increase in taxes on the consumer's residence.

THE PROPOSED LEGISLATION WILL DEPRIVE LOCAL UNITS OF GOVERNMENT NEEDED TAX DOLLARS

The impact of legislation such as this on the local units of government is immense. This legislation, like the 4-R Act, will allow the natural gas transmission pipelines to obtain an injunction against the collection of their taxes based upon their allegations of discrimination. Until a final adjudication of those claims on the merits, the local units of government will be deprived of their tax dollars. In the 4-R litigation in Kansas, the Railroads withheld, over a four year period, more than 24 million dollars from the local

county governments and school districts of Kansas; these dollars were ultimately paid to those units of government as legitimately owed taxes. However, during that four year period, essential services were curtailed due to lack of funds.

In contrast, during that same period of time, any other taxpayer owning property within the State of Kansas and having a complaint of discriminatory taxation was not entitled to withhold essential tax dollars from the local units of government pending the outcome of litigation. These inter- and intrastate taxpayers are required to pay their taxes under protest and seek refund.

THE PROPOSED LEGISLATION INTERFERES WITH STATES' RIGHTS

Legislation such as is before Congress today interferes with the rights of the various states to raise taxes and fund the operations of state government. Any federal encroachment to this area tends to obviate the very essence of our form of government and therefore demands careful consideration. McCulloch v. Maryland, 4 Wheat 316, 4 L.Ed 579 (1819). Even prior to the enactment of the Anti-Injunction statute, (28 USC §1341), when interstate taxpayers had the right to invoke federal diversity jurisdiction, the Supreme Court repeatedly declined the invitation to become involved in matters of state taxation; as rationale, the Supreme Court cited the doctrine of separation of powers, the existence of adequate remedies at law and comity. See for example Dows v. Chicago, 11 Wall 108, 20 L.Ed 65 (1871), Heine v. The Board of Level

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Commissioners, 19 Wall 655, 22 L.Ed 223 (1874) and State Railroad Tax Cases, 92 US 575, 23 L.Ed 663 (1876). In the 4-R Hearings conducted over a fifteen year period, Congress repeatedly emphasized that it did not intend to abrogate the rights of the states in the area of state taxation. Legislation which grants tax relief to an interstate natural gas transmission pipeline but denies the same relief to an interstate crude pipeline and an intrastate natural gas pipeline substantially alters and interferes with the rights of the State to reasonably classify its taxpayers and accord similarly situated inter- and intrastate taxpayers equal tax treatment. Congress should reject any attempt to enact such legislation.

SUMMARY

The State of Kansas opposes H.R. 2092 for the reasons outlined. The Federal Energy Regulatory Commission has the jurisdiction to monitor state ad valorem taxes; they have the ability to direct that these pipeline companies pursue their administrative and legal remedies should discriminatory state taxation occur. A further intrusion into matters of state taxation is unnecessary and unwarranted. The State of Kansas is convinced that after a study of this matter, Congress, too, will reject the anti-discriminatory tax amendment to H.R. 2092.

SCHEDULE I

INTERSTATE NATURAL GAS TRANSMISSION PIPELINES
IN THE STATE OF KANSAS

ANP Pipeline Company
Arkla, Inc.
Colorado Interstate Gas Company
El Paso Natural Gas Company
Internorth, Inc.
K N Energy Incorp.
Natural Gas Pipeline Company of America
Northwest Central Pipeline Corp.
Panhandle Eastern Pipeline Company
Producers Gas Equities, Inc.
Zenith Natural Gas Co.

SCHEDULE II

OTHER PIPELINES, INTER- AND INTRASTATE
IN THE STATE OF KANSAS
BY CLASSIFICATIONInterstate Gas Transmission and Distribution Pipelines

Gas Service Company
Greeley Gas Company
Kansas Power & Light Company
Union Gas System, Inc.

Intrastate Gas Transmission and Distribution Pipelines

Midwest Energy

Intrastate Gas Transmission Pipelines

Anadarko Production Company
Getty Gas Gathering, Inc.
Kansas Gas Supply Corporation
Kansas Pipeline Company L.P.
Phoenix Transmission Co.
Rural Gas Equities, Inc.
Southwest Gas Storage

Interstate Gas Distribution Pipelines

Commercial Pipeline Company, Inc.

Intrastate Gas Distribution Pipelines

Chase County Gas Service Company
Enterprise Gas Assn., Inc.
Iola Gas Corp., Inc.
M & R Gas Line
Mac County Gas, Inc.
Scotsman Estate Association, Inc.
Sunflower Pipeline Company
Tri-City Gas Company
169 South Gas Assn.
Twin County Gas Co., Inc.
Americus Gas Company, Inc.
Council Grove Gas Co., Inc.
Delaware Flood Company
Flint Hills Gas Company, Inc.
Kansas Public Service Company, Inc.
Liberal Gas Company
Mound City Gas Company, Inc.
Pleasanton Gas Company, Inc.
Severy Gas Company
Sunflower Elec. Cooperative Gas Division

Intrastate Gas Gathering Pipelines

Gulf Energy Gathering & Processing
 Benson Mineral Group, Inc.
 Central States Gas Company
 Union Carbide Corporation
 Cities Service Oil & Gas Corp.
 Pyro Energy (Clover Pipeline Company)
 Colonial Corporation
 Cotton Valley Gas Co.
 Delhi Gas Pipeline, Inc. (AMAX)
 Eagle Purchasing Corp.
 Strange Creek Pipeline-Evans Expl. Corp.
 Foor Pipeline Corp.
 Texaco Producing, Inc. (Ks. Gas Gath. System)
 Lagg, Inc.
 Leanna Gas Co.
 Love & Associates Kansas Gas, Inc.
 Santa Fe Minerals
 Mesa Petroleum Company
 Mesa Petroleum Co. (Tema System)
 Mobil Oil Corporation
 Republic Natural Gas Co.
 Moka Corp. (Toronto Gas Project)
 Zoandra Petroleum, Inc.
 Prairie Gas Transport Co.
 ANR-Gas Gathering
 Associated Natural Gas
 Sycamore Valley Gathering, Ltd.

Interstate Regulated Fluid Pipelines

Amoco Pipeline Company, Inc.
 Arco Pipeline Company
 Chase Transportation Company
 Chisholm Pipeline Company
 Continental Pipeline Company
 Emerald Pipeline Corp.
 Farmland Industries, Inc.
 Getty Pipeline, Inc.
 Hydrocarbon Transportation, Inc.
 Jayhawk Pipeline Corp.
 Kaneb Pipeline Company
 Mid America Pipeline Company-Div. Mapco
 Mobil Pipeline Company
 Okie Pipeline Company
 Osage Pipeline Company, Div. Getty Oil
 Phillips Pipeline Company
 Platte Pipeline Company
 Shamrock Pipeline Corp.
 Tomahawk Pipeline Company
 Total Pipeline Corporation
 Wesco Pipeline Co. - Cimarron System
 Williams Pipeline Company

Intrastate Regulated Fluid Pipelines

Kaw Pipeline Company

Intrastate Nonregulated Fluid Pipelines

Cities Service Company - NGL
 Clear Creek, Inc.
 Derby Refining Company, Inc.
 Exxon Corporation
 Texaco Trading & Tran., Inc. (GCC1-OIL)
 Mapco Fractionator, Inc. - Div. Mapco, Inc.
 Matador Pipelines, Inc.
 National Cooperative Refinery Assoc.
 Sterling Hydrocarbon, Div. Koch Ind., Inc.
 Total Pipeline Corp. (Potwin)

Chairman RODINO. Thank you.

Ms. Cox is deputy general counsel of the Oklahoma Tax Commission.

Ms. Cox. Thank you, Mr. Chairman and members of the committee.

The State of Oklahoma would first request that the written testimony presented be made of record.

Very briefly, the State of Oklahoma would like to make three points, first as to the ad valorem classification in Oklahoma. It is Oklahoma's reading of this bill that this bill would ask Congress to declare State classification for a direct property tax to be, per se, undue burden on interstate commerce as it relates to gas pipelines.

Oklahoma, being an energy producing State, these pipelines are shipping our natural resource out. That has never been considered as part of the ad valorem tax, however. The gas is not taxed ad valorem in Oklahoma.

The pipelines are taxed. They are taxed in the same class with all other public utilities or any other corporation that has any special ordinary rights like the right of eminent domain.

In reference to the attachment to Senator Cook's statement, Oklahoma has the same problem as Kansas does. The 12 percent is a level of assessment for real estate only. It does not include any inventory or other types of local business personal property, nor does it include any of the other public service corporation property.

Oklahoma has been in court in the Federal district court with 1341; 1341 basically has been viewed and used by the Federal district courts of Oklahoma as a protection of the ordinarily orderly collection process for State taxes.

Under Oklahoma's law, the tenth circuit has found that Oklahoma provides adequate, speedy remedies. The interstate pipeline companies had us in Federal district court with our severance tax. That was won on a motion to dismiss. The tenth circuit carefully reviewed all of our taxpayer remedies and found that we have adequate remedies, found that the taxpayer could even go into our courts for a declaratory judgment.

The extraordinary remedy of injunction in this case could well seriously interfere with the orderly collection of taxes. It would not distress Oklahoma to have its ad valorem taxes escrowed, because our State law already requires that if the pipelines have a problem with their ad valorem ratio assessment, or the valuation, or any other difficulty or problem with the millage problem, they may pay their taxes to our county treasurers under protest and go into our State district courts or before our State board of equalization with direct appeal to the Oklahoma Supreme Court, so that an injunctive relief in this case to tie up the money is already available in Oklahoma.

Oklahoma, too, has experienced litigation under the 4-R Act. Basically, the railroads have attempted to dictate to Oklahoma the method under which we will value the property. In Oklahoma, all railroads have a very conservative percentage right now. Because of the 4-R Act, they are assessed at 10.87 percent. That is not a problem that is being litigated. The problem is whether or not we will value the railroad the way they want us to or under a standard valuation method that we apply to all railroads.

The State of Oklahoma seriously fears that our 128 pipelines—approximately 35 of those pipelines are interstate gas pipelines—will be in the Federal district court attempting to get our Federal judges to value the property, to act as some kind of super-assessment officers. Thank you.

[The statement of Ms. Cox follows:]

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
MONOPOLIES AND COMMERCIAL LAW

THE HONORABLE PETER W. RODINO, JR.
CHAIRMAN

TESTIMONY ON BEHALF OF THE STATE OF OKLAHOMA

J. LAWRENCE BLANKENSHIP
General Counsel

By: Donna E. Cox
Assistant General Counsel
Oklahoma Tax Commission
2501 North Lincoln Boulevard
Oklahoma City, Oklahoma 74194
(405) 521-3141

My name is Donna E. Cox. I am Assistant General Counsel to the Oklahoma Tax Commission and I have actively participated in the administration of Oklahoma's ad valorem tax laws relating to the assessment of and litigation by natural gas pipelines as well as other property taxpayers for the past six years. I am appearing on behalf of the State of Oklahoma, in opposition to the proposed amendment to H.R. 2092. The proposed legislation affords to natural gas pipelines special benefits and extraordinary remedies. This amendment seriously limits state taxing powers, the state powers to classify activities and property for taxation purposes; superimposes some of the state taxing powers upon the federal judiciary; and expands the subject matter jurisdiction of the federal courts to disrupt, by injunctive relief, the states' revenue collecting powers.

In the 4-R Act, Congress afforded less special benefits to a deeply troubled rail transportation industry. That legislation now has a history.

This is the general context of Oklahoma's effort to provide this Committee and Congress with information concerning Oklahoma's ad valorem tax system; Oklahoma's classification of her oil and gas industry; and the litigation experience as a result of ad valorem taxation of property of the interstate, on-going concerns.

I. OKLAHOMA'S AD VALOREM TAX ASSESSMENT PROCEDURES

Ad valorem tax in Oklahoma is a millage tax levied by

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local vote of the people either within the county, municipality, school district, etc., taxing jurisdiction. Ad valorem tax rates (millage) in Oklahoma are uniform upon the assessed value of all taxable property within each local taxing jurisdiction. The millage levy is applied to the assessed valuation (and not the fair market valuation) of taxable real and personal property on the assessment rolls as prepared by the County Assessor, a local, elected official.

Such assessment is made by the county assessor as follows: The county assessor places a "use value" or appraisal value (fair market value for the present use) on the specific piece of real or personal property (i.e., commercial building, inventory, residential house, acre of farm land, household goods, barn, tools of trade, etc.) and then multiplies the "use value/appraisal value" by a percentage, not to exceed 35%, (the "assessment ratio") to determine assessed valuation." Thus "assessment" is not at all the same as "market value" or "appraised value".

On the other hand, the assessment of taxable property of railroads and public service corporations in Oklahoma is NOT assessed by the county assessor. It is assessed on a statewide basis by the State Board of Equalization; and then, the assessed value is extended back to the county for the county assessor to place upon the assessment rolls. The property of railroads and public service corporations is not placed on the assessment rolls, component by component, like other real or

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personal property. Instead, it is placed upon the assessment rolls only with a single sum assessed value.

The assessment of taxable property of a railroad or public service corporation is assessed by the State Board as follows: The Oklahoma Tax Commission finds a "valuation" or appraisal value (fair cash value/use value/true market value) on the entire, on-going business, system value allocated to Oklahoma and then recommends an assessment percentage (ratio), not to exceed 35%, to the State Board of Equalization by which the appraised system value allocated to Oklahoma should be multiplied to determine "assessed valuation". Thus, again, "assessment" is not at all the same as "true market value" or "appraised value".

The various county treasurers of the State collect ad valorem taxes in Oklahoma. Property is assessed as of January 1 and the tax must be paid the following December 31 and March 31.

The Oklahoma Constitution, Article X, §21 creates the State Board of Equalization, consisting of six statewide elected officials and one appointed official of the Executive Branch of Government, and imposes upon the Board two duties:

1. Equalization of the valuation of real and personal property of the several counties of this State; and
2. Assessment of railroad and public service corporation property.

The State Board of Equalization has experienced an

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upheaval in the past decade in its ad valorem tax assessment procedures. In 1975, the Oklahoma Supreme Court refused to issue a writ of mandamus against the State Board, although it found that the State Board was not equalizing the local assessments as between and among the counties. Poulos v. State Board of Equalization, 552 P.2d 1134 (Ok1:1975). In 1976, the Supreme Court issued a writ of mandamus mandating that the State Board bring each county to an assessment percentage of 12% within a 3 year period. Poulos v. State Board of Equalization, 552 P.2d 1138 (Ok1:1976). Then, in 1980, the Oklahoma Supreme Court held that the same assessment percentage must be applied by the county assessor to all real property, whether classified for "use valuation" as residential, commercial or agricultural. Cantrell v. Sanders, 610 P.2d 227 (Ok1:1980). And, in 1982, in Poulos III, the State Board had rejected the findings and recommendations of the Oklahoma Tax Commission's 1981 Ratio Study of the levels of local assessments and the Oklahoma Supreme Court again required equalization among and between the counties at 12%, with 3% deviation between 9% and 15% until the Board selected another assessment percentage for equalization purposes. Poulos v. State Board of Equalization, 646 P.2d 1269 (Ok1:1982).

In 1982, the Oklahoma Tax Commission recommended equalization orders to bring the local assessment levels within the percentage set forth in Poulos III. Forty-six (46) counties and multiplied thousands of individual property owners

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protested, but the State Board followed Poulos III and equalization became a closer reality. Also, in 1982, the Oklahoma Tax Commission recommended that a single assessment percentage be applied to the full value of property of railroads and of public service corporations within Oklahoma. The statewide average of assessment percentage applied to locally assessed commercial property was 10.87%, which is the assessment percentage that has been applied in the assessment of rail transportation property beginning 1982.

In 1981, the assessment percentages applied to Oklahoma full value of railroad and public service corporation property ranged from 8.25% to 35%, the constitutional maximum. In 1982, the State Board assessed the Oklahoma full value of public service property at 26%, in 1983 at 25%, and in 1984 at 26.25%. Also, in 1982, approximately eighty (80) of the railroad and public service corporations protested the assessments. The public service corporation protests were determined in McLoud Telephone Company v. State Board of Equalization, 655 P.2d 1037 (Okla:1982). In McLoud, supra, the Oklahoma Supreme Court held that property of public service corporations is recognized and constitutes a distinct class for ad valorem tax purposes, and, that classification of property of public service corporations does not violate the equal protection clause of the Fourteenth Amendment, relying upon Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed. 24 351 (1973).

The public service corporations have continued to protest

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the annual assessments in 1983 and 1984, primarily challenging the unit valuation methodology.

However, one county assessor has sued a pipeline alleging that under the valuation methodology required by the county assessors, Arco Pipeline Company has property within Lincoln County with a full value of \$3,081,000.00, rather than the \$1,146,919.00 calculated under the unit valuation concept. The case is pending before the Oklahoma Supreme Court on an application for a writ of prohibition in the Oklahoma State Board of Equalization v. Craig, No. 62,327. Both the Oklahoma Attorney General and the Oklahoma Tax Commission are defending the lower, unit valuation in that lawsuit.

And, finally, Oklahoma is in the United States District Court and the Court of Appeals for the Tenth Circuit defending valuation challenges of the Burlington Northern Railroad for 1982 and the Burlington and Missouri Pacific for 1983 ad valorem tax assessments. In the 1982 case, the court has ruled it has no jurisdiction to consider valuation challenges and the 1983 case has been stayed pending appeal in the 1982 case. The Registry of the U.S. District Court currently holds in excess of \$1.6 million dollars of local tax revenues for the two tax years involved. As a postscript, settlement of this litigation is imminent.

The railroads challenge the state valuation methodologies as not adhering to industry standards. We searched and inquired to locate the industry standards, which do not exist.

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So, twenty-six (26) states attended the First National Conference on Unit Valuation Standards, organized in large part by Oklahoma, on September 24th - 28th, 1984, in Denver, Colorado. Work has continued on the unit valuation standards which will be presented to the Assessment Standards Committee of the International Association of Assessing Officers this week. The I.A.A.O. membership consists of more than 12,000 public officials charged with assessing duties and a majority of the professional fee appraisers. Such standards will allow uniformity for the interstate public service corporations. Currently, Burlington's rail transportation system has been valued by the various states for 1982 from a low, self-value of \$1.4 billion to a high, state value of \$4.2 billion. Oklahoma valued Burlington in 1982 at \$3.5 billion. Unit Valuation Standards for state tax administration will alleviate such variances.

This recent history of Oklahoma's ad valorem tax administration is presented to give this Committee deeper insight into the agonizing impact of conferring federal court jurisdiction upon such a complex local tax.

II. PIPELINES ARE WITHIN THE CLASSIFICATION OF PUBLIC SERVICE CORPORATIONS IN OKLAHOMA

The Oklahoma Constitution, Article IX, §34 and 68 O.S. 1981, §2442 define public service corporations as those persons or entities authorized to exercise the right of eminent domain or to use or occupy any right-of-way, street, alley or public highway, along, over or under the same, in a manner not

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permitted to the general public. Pipelines are specifically included in the classification of public service corporations.

68 O.S. 1981, §2443 and 2455 mandate that the Board annually assess property of all public service corporations at an assessment value not to exceed 35% of the full value thereof.

The proposed legislation classifies "gas pipelines" thereby creating, under Oklahoma law a subclassification of public service corporations. Oklahoma, an energy producing state has oil, gas and liquid pipelines and interstate and intrastate pipelines. The oil and gas industry is no unwelcomed foreigner in our state house or our local governments and this legislation will likely bring pressure for the state to provide the same relief to all our pipelines. All pipelines now enjoy special benefits under the ad valorem tax assessment procedures. All equipment used in production is exempt from ad valorem tax. 68 O.S. 1981, §1001. Congress has not determined that gas pipelines have suffered undue discrimination, it is only concluded and/or presumed by the proponents of this measure. This proposed legislation follows the language of the special benefits and remedies granted railroads, as part of the revitalization program, in Section 306, now codified as 49 U.S.C. §11503. Congress determined that the railroads had suffered excessive property taxation or tax discrimination in 1965. The finding was based upon dejure assessment discrimination. Report No. 1483 described specified

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examples of only two circumstances of tax discrimination: (1) dejure assessment ratio discrimination and (2) tax rate discrimination. Gas pipelines do not suffer excessive ad valorem taxation similar to that of the railroads in 1965.

Oklahoma values and assesses the property of all its pipelines, oil and gas, interstate and intrastate in the same manner. This proposed measure, if enacted, would necessarily generate pressure from the intrastate and oil and liquids pipelines for state action to allow them similar benefits in the name of uniformity; in other words, it forces the energy producing state to follow suit, it fixes a state fiscal policy ordinarily left to state legislatures or state electorates. It opens the state to serious challenges under the equal protection clause because the gas industry is unequally favored.

Pipelines, for the most part, are not common carriers for hire as are the railroads, airlines and interstate motor carriers. Pipelines are not struggling to earn a profit from their tariffs, transportation rates. Rather, pipelines profit from the gas, the commodity owned and shipped by the pipeline its subsidiaries or affiliates, in its own pipe. It is this commodity, Oklahoma's natural resource, Congress has authorized the gas pipelines to sell at a price which includes Oklahoma's severance tax and other tax costs of business. Natural Gas Policy Act, 15 U.S.C. §330 et seq.; and Natural Gas Act, 15 U.S.C. §717 et seq. Thus, although pipelines are included in

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the definition of common carrier in 49 U.S.C. §10102, it is limited to pipelines providing transportation for hire. So many of the interstate pipelines move only gas owned by the owners or subsidiaries of the pipeline that this new classification is not warranted. See: "Statistics of Interstate Natural Gas Pipelines Companies," published November 1984, by the Energy Information Administration, Washington D.C., Report No. DOE/EIA-0145 (83), page 180, grand natural gas operating revenues for all Class A and Class B gas pipelines for 1983 was \$64,323,886,933.00, while the revenues from transportation of gas for others was \$1,863,628,434.00; and, total gas deliveries were 31,814,848 trillion mcf, which includes deliveries of gas transported or compressed for others at 5,972.607 trillion mcf.

Lastly, it is the pipeline itself that is valued, the situs property which does not move in interstate commerce like a railcar, airplane, or heavy truck. The products that do move in interstate commerce, natural gas, are almost never included in the value due to freeport or other similar exemptions. The argument that pipelines are akin to railroads, airlines and motor carriers each of which move transportation vehicles from state to state is sophistry. Equal protection and notions of equity do not bend to such sophistry. The proposed, remedial legislation is far too serious in its limitation of the states' internal, direct taxing power and should not be enacted.

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III. INJUNCTIVE RELIEF IN THE FEDERAL COURTS IS NOT NECESSARY

The Oklahoma Statutes require any ad valorem tax paid under protest to be segregated by the county treasurer pending final determination of the challenge to the tax. Injunction prohibiting distribution of protested taxes, thus, is mandated by state law. Such an injunction insures that the tax revenues will be quickly available for distribution to the prevailing party, particularly to the schools, cities, counties, etc., if the tax is upheld, without a 60 or 90 day delay to obtain the revenues from some escrowed account. The remedies available to airlines did not vest or include jurisdiction in the federal courts (by declaring an exception to 28 U.S.C. §1341). The states in their administrative or tax court hearings are nonetheless bound under the supremacy clause to grant the substantive tax relief afforded airlines.

Oklahoma asserts that airlines have achieved just as speedy relief, perhaps even more speedy relief, than have their railroad and motor carrier brethren who have taken their cases to the federal district courts.

Such an alternative forum, the federal court, allows taxpayers' lawyers to select or shop for a better forum on a case-by-case basis. It has done little else.

Against this interest should be arrayed the hardships caused by the situation of dual forums. The federal courts are grossly overburdened at the present time. Litigation involving the equalization of property taxes, is a highly technical area.

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The data involved in a sales ratio study is voluminous and very technical. The states, through their remedial processes, can assemble this evidentiary data and enter a ruling, appealable to the states' highest judicial tribunals and, potentially, to the United States Supreme Court. There is no need to place additional and complex litigation burdens upon an already overburdened federal judiciary?

Second, when resort has been had to federal courts under those tax limitation laws previously passed, it has been necessary to stay the pendency of the state proceedings, which by law have begun at valuation and have continued until stayed by judicial order. Hence, dual judicial forums lead invariable to multiple actions and drain, rather than conserve, limited judicial resources.

28 U.S.C. §1341 "has its roots in equity practice, in principles of federalism, and in recognition of the imperative need of a State to administer its own fiscal operations." Tully v. Griffin, Inc., 429 U.S. 68, 73, 97 S.Ct. 219, 222, 50 L.Ed 2d 227, 232 (1976).

For many years prior to 1937 the Federal Courts would not ordinarily restrain state officers from collecting sales taxes where state law afforded an adequate remedy to the taxpayer. Matthews v. Rodgers, 284 U.S. 521, 52 S.Ct. 217, 76 L.Ed. 447. This pre 1937 withholding of extraordinary relief by Federal Courts having authority to give it was not a denial of jurisdiction. On the contrary, it was but a recognition that a

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Federal Court of equity could refuse to give its special protection to private rights when the exercise of its jurisdiction would be prejudicial to the public interest. It was deemed then to be in the public interest that Federal Courts of equity should exercise their discretionary power to grant or withhold relief so as to avoid needless obstruction of the domestic policy of States. Great Lakes Dredge and Dock Company v. Huffman, 319 U.S. 293, 63 S.Ct. 1070, 87 L.Ed. 1407 (1943).

Congress enacted the original version of 28 U.S.C. §1341 in the Act of August 21, 1937, 50 Stat. 738, as an amendment to Section 24 of the Judicial Code, 28 U.S.C. §41(1). Although the opinion in Great Lakes Dredge and Dock Co. v. Huffman, supra, refers to this enactment as a recognition and "sanction to this practice of Federal equity courts" and as the "confirmation of that practice by Congress" (63 S.Ct. 1073), it is apparent that 28 U.S.C. §1341 does something more than merely approve the former practice by Federal equity courts of withholding injunctive relief which they had the jurisdictional power to give.

The thrust of 28 U.S.C. §1341 is to remove from the Federal courts subject matter jurisdiction to enjoin enforcement of a State or local tax where a plain, speedy and efficient remedy may be had in the courts of such State. Once a Federal court determines that a taxpayer has available to him a plain, speedy and efficient remedy in the courts of the

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State, it is no longer a matter of discretion. Instead, under 28 U.S.C. §1341 the Federal court must dismiss after it finds that the taxpayer has a plain, speedy and efficient remedy in the courts of such State.

"It is well established that §1341 is an explicit congressional limitation on the jurisdiction of the federal courts in cases which would enjoin, suspend or restrain state tax levy, assessment or collection." Bland v. McHann, 463 F. 2d 21 (5th Cir. 1972) (See also Robinson Protective Alarm Company v. City of Philadelphia, 571 F. 2d 371 (3rd Cir. 1978).

A plain, speedy and efficient remedy may be had in the Courts of Oklahoma by any pipeline aggrieved by the valuation (appraisal) of its taxable property for ad valorem tax purposes.

Even before an Oklahoma tax becomes due, a taxpayer who may become liable for a tax can seek declaratory relief from constitutional infirmities. Oklahoma Tax Commission v. Smith, 610 P.2d 794 (Ok1:1980).

68 O.S. 1981, §§2466 and 2469 provide plain, speedy and efficient remedies, including judicial review in the Courts of Oklahoma for unreasonable valuation of property for ad valorem tax.

Section 2466 empowers the State Board of Equalization to conduct hearings and grants any railroad or public service corporation a statutory right to a hearing in which evidence is received and legal arguments heard. The hearings before the State Board are subject to the Oklahoma Administrative Procedures Act, 75 O.S. 1981, §301 et seq. Tulsa Classroom

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Teachers Assoc., Inc. v. State Board of Equalization, 601 P.2d 99 (Okla.1979). Pursuant to 75 O.S. 1981, §318, appeal may be had from any order of the State Board of Equalization.

To assure all aggrieved taxpayers adequate remedy, 68 O.S. 1981, §2469 grants a taxpayer the right to file suit for recovery of taxes paid under protest where the illegality is alleged to arise by reason of some action under the ad valorem tax laws from which the laws provide no remedy. Cantrell v. Sanders, 610 P.2d 227 (Okla.1980).

Further, claims for refund may be had under 68 O.S. 1981, §2479, with right of appeal by trial de novo to the state district court.

The Oklahoma remedies to ad valorem taxpayers are plain, speedy and efficient. A pipeline's remedy for alleged ad valorem tax overvaluation both can and should be addressed through the remedial procedures in Title 68, Oklahoma Statutes.

There is no dispute that under the law of Oklahoma taxpayers can obtain in the courts of Oklahoma a "full hearing and judicial determination of the controversy" in which they may raise any and all constitutional objections to the tax.

The remedy available in Oklahoma courts includes the right of direct appeal to the United States Supreme Court under 28 U.S.C. §1257(2) if the final decision of the Oklahoma Supreme Court is against a taxpayer's claim that is repugnant to the Constitution, treaties or laws of the United States.

In Cities Service Gas Co., et al. v. Oklahoma Tax

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Commission, 656 F.2d 584 (10th Cir. 1981) cert. den. 102 S.Ct. 972, the United States Court of Appeals for the Tenth Circuit affirmed the dismissal for lack of subject matter jurisdiction Order of Judge Eubanks upon the proscription of §1341 and Rosewell v. LaSalle National Bank, 450 U.S. 503 (1981). It is note-worthy that the major interstate gas pipelines challenged Oklahoma Conservation Excise tax, severance tax, in the Cities Service case. Had this proposed legislation been in place, a temporary injunction against the collection of multiplied millions may have been entered.

Section 1341 is a broad prohibition against the use of the equity powers of federal courts in cases involving state tax matters. Indeed, the United States Supreme Court itself has recently held that Section 1341's "overall purpose", indeed its "first and foremost" consideration, was "to limit drastically federal court jurisdiction to interfere with so important a local concern as the collection of taxes". (Emphasis added) Rosewell v. LaSalle National Bank, supra. This proposed legislation is in derogation of §1341 and will halt the assessment, levy and collection of local taxes.

In summary, while interstate commerce is important and vital to the nation's interest, so too, is the maintenance of elementary and secondary common education and the maintenance of essential local governmental services. These are local governmental functions which the involved local taxes directly support. When such important and sometimes competing interests

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are assumed to be in conflict, conventional wisdom would dictate exploring the preservation of both interests and the delicate balance of federal-state comity in the area of direct taxation. Accordingly, Oklahoma would urge that further federal limitation upon so vital a revenue source as the local property tax be adopted as a remedy only as a last resort.

IV. VALUATION SHOULD BE SPECIFICALLY EXCLUDED FROM
FEDERAL COURT SUBJECT MATTER JURISDICTION

During the congressional hearings predating the 4-R legislation, the railroad industry representatives told Congress that valuation methods would not be affected by the proposed legislation. For example, in the hearings before the Subcommittee on Surface Transportation of the Committee on Commerce on S.927, 90th Cong., 1st Sess., P.29, Mr. Phillips N. Lanier, speaking on behalf of the Association of American Railroads responded:

Senator HANSEN. Is this same formula--this same three-factor formula in use for the purpose of this study throughout the country, or is this only the way it is done in Wyoming?

Mr. LANIER. The formula varies from State to State, and we are not dealing with the valuation question. This is not our problem. We speak only of the equalization of the tax rate. (Emphasis added.)

Repeatedly, railroad representatives told Senate and House Committees that Section 306 of the 4-R Act did not affect valuation standards or methods. The railroads wanted, they said, Congressional aid only in equalizing assessment ratios (equalization relief) and in equalizing tax rates. In

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Oklahoma, equalization relief of assessment ratios and tax rates is moot.

It should be noted, the railroads have instituted numerous actions in federal district courts assailing the states' valuation methodologies, arguing that Congress "authorized" valuation relief as a part of the 4-R Act. These actions have cost the states literally millions of dollars. Lawyers' time that could have been devoted to other important revenue generating tax matters has been spent defending these "federal valuation" actions . . . actions that the railroads had previously told Congress were not authorized by the legislation.

In one of the landmark cases, the United States Court of Appeals for the Tenth Circuit denied that Congress had authorized "valuation relief." Burlington Northern Railroad Co. v. Lennen, 715 F.2d 494 (10th Cr. 1983), cert. denied, U.S. Supreme Court. In Trailer Train Co. v. State Board of Equalization, C-84-4365 SW (N.D. Cal. June 22, 1984), the railroads' claimed, in effect, that California's methods were not state-of-the art and hence illegal. The Court held that it did not appear from the "plain meaning" of Section 306 that Congress intended federal district courts to act as "super-assessment tribunals", sitting to oversee state administrative determinations of value.

There were many reasons why Congress was reluctant to include valuation relief as a part of Section 306 of the 4-R

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Act. The United States Justice Department had expressed concern that a requirement for the federal courts to perform the valuation function (even indirectly) would create grave constitutional questions, perhaps running afoul of the Supreme Court's decision in Moses Lake Homes, Inc. v. Grant County, 365 U.S. 746 (1961). See Justice Department's Comments, generally, at S.Rep. No. 1483 (accompanying S.927), 90th Cong., 2d Sess., (1968), at page 12.

The important point at present is that following enactment of the 4-R Act the railroads did exactly what they told Congress they would not do. They have used Section 306, in effect, to wage war upon the states' valuation methods in the federal courts. This proposed legislation, as drafted, as wrought with conflicts in its use of "assessed value" "assessment jurisdiction" and the type of tax against which a federal court may issue an injunction.

Oklahoma respectfully urges this Committee to insert whatever language it deems appropriate, if it decides to go forward with federal limitation on local property taxation as a remedy, which will clearly exclude or bar any federal jurisdiction over the states' taxing powers other than ad valorem tax and over the states' valuation methods or standards; caveat: avoid creating supernumerary tax administrators out of the federal judiciary.

Thank you.

Chairman RODINO Thank you.

Our next witness is Mr. James Delaney, chief counsel for the board of equalization of the State of California.

Mr. DELANEY. Thank you, Mr. Chairman, for this opportunity to present to you the position of the California State Board of Equalization, which is composed of five elected officials who are constitutional officers.

Additionally, Mr. Nevins, one of those members, is the existing president of the National Association of Tax Administrators, and he, like the board itself, is in opposition to this measure.

To briefly state it, the reasons for the opposition are: First, the bill, in our estimation, lacks any demonstration nor is there any evidence showing that the bill is, in fact, necessary.

Second, we feel the lack of clarity in some of the provisions can do nothing but muddy the waters, cause more litigation, and lead to no meaningful resolution of a serious problem.

Third, we feel that the granting of concurrent jurisdiction in the State and Federal courts is a mistake, that it will and it has under the 4-R Act led to multiplicity of suits.

We believe the State courts have demonstrated an ability to grant relief when it is proper under the constitutional ideas of what is discrimination and what is proper classification, and that brings me to the real reason for the opposition, and that is that we believe the proponents of the bill have totally confused classification with discrimination.

We have, of course, a constitutional system. We have the U.S. Supreme Court that interprets that Constitution, and they have, over time, and the State courts likewise, agreed that it is appropriate to classify similar properties similarly for taxation purposes.

Discrimination exists when those who are the same, or the property that is the same, or people who use property for the same purposes, are treated differently.

We have a classification where we have public service companies; call them utilities, call them pipelines, what-have-you. If they are all treated similarly, then under the Constitution they are not being discriminated against, even though they pay a different amount in tax burden or they are assessed differently than the corner 7-Eleven, than the gas station, or any property that is different from them.

A pipeline, as we all know, traverses many counties in the State, several States; it is a different animal. The courts have said, when there is a difference, it is appropriate to recognize it for tax purposes. That's what I believe most of the States are doing. They have not singled out the gas pipelines for being put in a single category.

If I understood correctly and heard correctly, only four States apparently do that. I'm not familiar with them. In California, I know that the interstate pipelines and the intrastate pipelines would be in the same category as the electric companies, the telephone companies, the water pipeline companies, the railroads, and so on. They are State assessed.

So, to repeat a little bit, what is the necessity for such legislation? It would appear to be to set up a classification that is different than those other businesses and activities I have mentioned

and to get preference for the companies that are asking for this enactment.

That is real discrimination. The members have brought it up, and it's clear, I believe, that's exactly what it is.

If, in a matter of this importance, it is to be put into some kind of legislation, let's not do it because some other activity got Federal relief. We should do it on the basis that it is deserved—it has been proven that there is discrimination, and take care of that. But let's not do it on the basis that these pipelines have been classified differently than, as we have said, the corner drugstore or what-have-you.

There has been testimony to the effect that California is not affected. I don't believe that is correct. First of all, it depends entirely on how you interpret the language of this provision.

If it is interpreted to mean that a local California company who transports or distributes gas that has been in interstate commerce, then it presently affects California.

The witnesses in favor of the bill say, well, that's not what it means. I don't get reassurance from those statements. If it is not what is meant, let us clarify the bill and make sure that it says what it is intended to, not spend our time, as we have done in the railroad cases under the 4-R Act, in court, arguing about the meaning of a bill that they said was totally clear.

Now, we presently have in California ratio cases pending in the Federal district courts. We likewise have valuation cases pending in the State courts. When we tried to conclude the ratio cases, the railroads said no, let's wait to see what the valuation case turns out to be. So we are totally hung up, waiting, one for the other, to do something.

You should not have that split between valuation ratio and rate. It is all one package. That's why I think it would appropriate to put these State courts into the picture in a meaningful way. Plus, if you were to do that, it should be clear what the relief is.

In California, we had a Federal judge give a tax refund to six private railroad car companies.

In Iowa, a judge refused refund as a remedy, saying that the remedy could only be prospective change because of the restrictions of the 11th amendment, the point being, let's tell the courts what it is they can and can't do, and what is appropriate and meant by this statute.

I have to conclude because of time and just say that I refer you to the cases that are in the written material and make the point that they do not show that the States will not give relief. They show that the States give relief according to what the U.S. Supreme Court has said is constitutional law. When you go there, you get what you are entitled to, according to the facts proved.

On the one other point about the transporting of the cost of the taxes from the State of origin to a consumer State, I ask you, what is the difference between that and the light and the heat bill paid by any company that produces a product and sells it outside the State?

Maybe you would say, well, that's a different ball game; taxes are different. But the U.S. Supreme Court has already looked at the problem.

You have the case of, I believe, *Commonwealth Edison Co. v. State of Montana* in 1981. The Supreme Court looked at that very issue and said that that is not discrimination, that is not interference with or undue burden upon interstate commerce. You only have that problem when you don't treat all the people in the originating State the same.

Now, in that instance, you will recall that the facts were that 90 percent of the coal mined in Montana was sold out of State—90 percent, yet the Court found that the 10 percent that was mined and sold in Montana was treated just like the 90 and concluded that there was no discrimination. There is your test.

Now, in California we don't transport gas, we do transport oil, and I assume that the price of the product includes taxes. But if we get down to arguing about what the price includes, we will never end with these problems.

With that, I will conclude, Mr. Chairman.

[The statement of Mr. Delaney follows:]

STATEMENT OF
JAMES J. DELANEY, CHIEF COUNSEL
CALIFORNIA STATE BOARD OF EQUALIZATION

RE: HR 2092

The House Committee on Public Works and Transportation report on the subject bill states that its purpose is to authorize appropriations to carry out the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Act of 1979. Sections 1, 2 and 3 of the bill clearly do that. However, section 4, entitled Tax Discrimination Against Natural Gas Transmission Property, not only concerns taxation of property rather than authorizations to implement either or both of these acts but further relates only interstate gas pipeline property with no reference to hazardous liquid interstate pipeline property.

Section 4 of the bill prohibits a State or any subdivision thereof from assessing a natural gas transmission property at a value that has a higher ratio to true market value than the ratio of assessed value to true market of other commercial and industrial property in the same assessment jurisdiction or to levy or collect an ad valorem property tax on natural gas transmission property at a tax rate that exceeds the rate applicable to commercial and industrial property in the same assessment jurisdiction. These prohibitions are predicated on a finding that such assessment and tax rate policies result in unreasonable burdens on and discrimination against interstate commerce. The finding does not refer to any study or other foundational facts on which it is based and is, therefore, beyond analysis or refutation. Logic, however, indicates that the finding is correct only if an assessment ratio applied to the value of interstate natural gas transmission property is higher than that applied to the value of similar interstate properties and the tax rate is also equal to or greater than that applied to the latter properties. If either the assessment ratio or the tax rate applied to other similar properties is higher a calculation of taxes paid per hundred dollars of value is necessary in order to calculate the respective tax burdens. Further, the finding views the property tax in isolation and ignores the fact that all persons, corporate or otherwise pay various taxes and that a difference in valuation, assessment ratio or rate for property tax purposes may not be discriminatory when viewed as part of an overall system composed of several elements. Discrimination appears appropriately defined only by reference to total tax burden and a difference in the taxation of properties that are basically the same physically or in the way they are used. This bill views discrimination in property taxation without concern for total tax burden and also ignores a significant aspect of that tax,

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i.e., the valuation standard and the valuation methodology employed in establishing the values against which ratios, if used, are to be applied.

California Assessment Procedures

In California varying ratios are not specifically required by law. The California Constitution mandates the use of full value which in the case of locally assessed property means the market value of real property as of the year in which it was newly constructed or was last sold. The market value for the year that either event occurs becomes the base year value which is factored each year to reflect changes in the consumer price index with increases not to exceed 2 percent per year. The California Supreme Court has held that Proposition 13, which gave us this base-year system, does not apply to state-assessed property including intercounty pipelines. These latter properties are valued annually on a unitary basis by the State Board of Equalization. The unitary value is allocated to the various areas in which unitary property is located and is subject to the tax rate applicable to all property in that tax rate area.

The difference in the appraisal interval for state-assessed property and locally assessed property, i.e., annually versus at the time of sale or new construction, does suggest that there may be a defacto variation in ratios applied to the market value of property located in California depending on whether the state or a county agency makes the assessment. However, this appearance of difference is misleading in that local base year values are increased not to exceed 2 percent per year and are established by using comparative sales data whereas utility and pipeline property which rarely sells as a unit must be valued by the income and/or cost approaches to value. Theoretically, the different valuation approaches should give the same approximate value; however, the comparative sales approach is more reliable since it reflects actual market transaction, whereas the income and cost approaches can produce values that reflect temporary business slow down or even mismanagement. The point is that before it can be reasonably concluded that any meaningful difference exists in the taxation of centrally assessed property and other property it is necessary to be informed as to the standard of value employed, the methods used in determining that value and all other facts that impact on the assessment of the different categories of property before the tax rate is applied.

Technical Problems

Putting aside the merits of this bill, its language should be carefully reviewed since portions of it lack clarity which insures litigation and the time and expense associated therewith, e.g., the definitions of "natural gas transmission property" and "natural gas company" appear to be taken from the Natural Gas Act.

Both of these terms have received broad interpretations by the courts concerned with the reach of regulatory authority of the Federal Power Commission and more recently, the Federal Energy Regulatory Commission. Broad interpretations appear appropriate to accomplish the congressional desire to assure adequate, reliable and reasonably priced supplies of natural gas and to protect consumers against exploitation by natural gas companies. However, they can be interpreted to apply to the taxation of strictly intrastate gas lines simply because they transport or distribute gas that has been in interstate commerce. A state's authority to impose taxes upon property located within its borders, unless clearly demonstrated to discriminate against interstate commerce, should not be placed in doubt by language adopted from statutes serving a totally different purpose.

No written evidence or testimony previously presented on this bill shows the existence of tax discrimination against interstate gas pipelines. This at the least makes questionable the need for this legislation and at the most suggests that if discrimination does exist, curative legislation should be precise and unambiguous and clearly applicable only to pipelines used for the transportation of natural gas in interstate commerce. Intrastate pipelines, whether transporting or distributing gas obtained from an interstate transporter, should be clearly excluded by definition so that the courts will not apply regulatory theories to the taxation of intrastate pipeline property whose only connection with interstate commerce is that the gas it sells is purchased from an out-of-state supplier.

Another aspect of this bill that needs clarification is the requirement that assessment ratios and tax rates applied to natural gas transmission property be no higher than those applied to other properties. In one portion of the bill this determination is made by comparing ratios and tax rates applied to interstate pipelines with ratios and tax rates applied to "...other commercial and industrial property in the same assessment jurisdiction." However, in subsection (b) (4) of Section 20 the comparison required, while far from clear, appears to be between interstate and other natural gas pipelines. This subsection is very confusing in that it refers to "tax

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rate assessments and fair market value application [that] achieve rate uniformity...." It appears that the reference should be to "tax rates" and "market value assessments" and that the reference to "rate uniformity" must mean uniformity of property tax burden and not tax rates. This language should be clarified and if the comparison to be made is between and among interstate and intrastate pipeline that should be specifically stated.

The basic question is what properties are to be compared? In California we have no pipeline companies that exclusively transport natural gas in interstate commerce although we do have pipelines that transport oil and products refined from oil in interstate commerce. We do have five companies which are public utilities that purchase gas at the California border from natural gas companies and then transport and distribute it to consumers or sell it to other utilities that sell it at retail. We also have ten or twelve intercounty natural gas pipelines and the same number of crude pipelines and eight or nine pipe and canal companies transporting and distributing water. The property of all of these companies is valued at market value using the standard approaches to value, assessed at 100 percent of market value and taxed at the rate applicable to all other property in the same taxing jurisdiction.

We have learned from such publications as the Oil and Gas Journal that there are three interstate natural gas pipelines on the drawing board that will enter California. One is proposed by subsidiaries of Williams Company and Tenneco, Inc., and will run from Wyoming to Bakersfield, California. The second is proposed by Trans Canada Pipelines Ltd. and Lear Petroleum and would transport gas from Topock, Arizona, to Bakersfield and west. The third is proposed by Houston Natural Gas Corp., El Paso Natural Gas Co., and Pacific Lighting Corporation (a California utility) and would transport gas from Topock to San Ardo, California. If these projects are completed they will be state assessed and will be valued and taxed just like the existing gas, oil and water pipelines I have referred to. If subsection (b)(4) of Section 20 is intended to require equality of assessment levels and tax rates among interstate and intrastate gas pipelines, California would clearly fall within its coverage when these new lines come into existence.

Judicial Review

That portion of the bill giving concurrent jurisdiction to state and federal courts to settle property tax disputes appears

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to contain an internal inconsistency but more importantly, it will, in practice, force the states to litigate all disputes in the federal courts.

The bill provides that relief may be granted by the court if the value ratio applied to natural gas transmission property as determined by ratio studies exceeds by 5 percent or more the value ratio applied to other commercial and industrial property. If the ratio for the other commercial and industrial property cannot be determined to the satisfaction of the court the court is nevertheless mandated to find that natural gas transmission property assessed at a higher ratio to market value than the assessed value of all other property subject to tax has to market value is a violation of this act.

Mandating the courts to base findings on a comparison of these alternate property groupings provides a strange result. The definition of commercial and industrial property contained in this bill excludes "other transportation property and land used primarily for agricultural purposes or timber growing". Presumably, the exclusion of these properties from the definition of "commercial and industrial property" is because of their recognized lack of similarity to pipeline property. However, when a ratio for commercial and industrial property cannot be determined the very same property excluded because not comparable must now be included. This is similar to saying that one should compare apples to apples but if two apples cannot be found, it is appropriate to use an orange or a banana for comparison purposes.

The provision of the bill giving concurrent jurisdiction to federal and state courts to prevent violations is of no practical meaning. California's experience under the "4R" Act is that state courts will not be used. Since the plaintiff picks the forum we have found that at least the railroads prefer the federal court. In fact, they tried to have their challenges concerning ratios, tax rates and valuation tried in a federal district court. The federal court concluded that valuation issues were not properly before it. As a result, we have multiple actions proceeding more or less at the same time. The valuation issues are being tried in a state court and ratio issues in the federal court. This is not only inconvenient for the attorneys and witnesses but time consuming and expensive when there has been no showing of the inadequacy of remedies available in a state court.

Finally, it should be noted that if a federal court finds a violation, this act does not specify the relief to be granted. This has presented problems in the railroad "4R" cases in that a U.S. District Court judge in California ordered a refund

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of taxes to six private railroad car companies (Trailer Train Company v. California State Board of Equalization, Civ. No. 81-4778-SW, U.S. District Court), whereas a judge for the U.S. District Court in Iowa (Burlington Northern Railroad Company v. Gerlad D. Bair, Director, Iowa Department of Revenue, Civ. No. 83-100-A, U.S. District Court) refused to give anything but prospective relief on the basis that without clear authority from Congress, the Eleventh Amendment to the United States Constitution prohibits federal courts from ordering the payment of money from public funds in a state treasury.

The only testimony I have seen on why federal courts should have jurisdiction as provided in this bill was that presented in the Senate hearings last year on S. 2932. In what little time was available to me, I reviewed some of the cases commented on in a written statement filed in those proceedings by Mr. Everett B. Gibson, a Tennessee lawyer. The cases were cited for the proposition that only in the federal courts could pipelines get adequate relief from state discrimination. Let's look at the actual holdings of these cases.

Appeal of Colonial Pipeline Co., 313 S.E.2d 819 (N.C. App. 1984)
This was a valuation case that did not involve the issues of ratios or tax rates.

Ex rel Poulos v. State Board of Equalization, 646 P.2d 1269 (OKLA 1982)

This was an intercounty equalization case in which the Oklahoma Supreme Court itself determined the ratios applicable to all real property in the state because the State Board of Equalization failed to do so in accordance with a prior court mandate.

McCloud Telephone Co. v. State Board of Equalization, 655 P.2d 1037 (OKLA 1982)

In this case the Oklahoma court let stand a ratio of 26 percent on state-assessed property and ratios of 9 to 15 percent on locally assessed property on the basis that property owned by a public service corporation forms a distinct class for purposes of taxation and that the 14th Amendment to the U.S. Constitution allows systems of taxation that recognize reasonable differences and distinctions.

Southern Pacific Co. v. Cochise County, 377 P.2d 770 (ARIZ 1963)
Here, the railroad complained that the ratio used on its property was 83 percent, whereas other property was at 20 percent. The Arizona Court held that the railroad was correct that a classification that included only railroad property was invalid. Relief was granted prospectively based on Arizona law.

Apache County v. The Atchison, Topeka and Santa Fe Railroad, 401 U.S.1005, 91 S.Ct. 1257, 28 L.Ed.2d 542 (1971)
In this case, the court for the State of Arizona denied the railroad's relief which had been requested based on the fact that its property had been placed in the highest of three statewide ratio classifications. It argued that the classifications violated state uniformity requirements, constituted an undue burden upon and discrimination against interstate commerce and violated due process and equal protection.

The court, in denying relief, noted that "Constitutional provisions requiring that all taxes be uniform on the same class of property does not require that the legislature classify like items of property in the same class for property tax purposes; the legislature may classify similar items in different classes based on the user of the property, i.e., industry, or use to which the property is put." The court further noted that the U.S. Supreme Court has upheld classification based on the difference between butter and oleomargarine citing Magnano Co. v. Hamilton, 292 U.S.40, 54 S.Ct. 599, 78 L.Ed. 1109.

When the railroad appealed the state court decision to the United States Supreme Court the case was dismissed for want of a substantial federal question.

Souther Railroad v. Clement, 57 Tenn.App.54, 415 S.W.2d 146 (1966)

This was a case in which railroad property was assessed at a 60 percent ratio and locally assessed property was assessed at 10 percent. The Tennessee appellate court granted relief on a prospective basis.

Classification v. Discrimination

A cursory review of the holdings in these cases makes it clear that the state courts will hear these matters and will grant relief when discrimination exists. What they also show is that the proponents of this bill who are claiming that they cannot obtain relief from discrimination are, in fact, objecting to the long accepted legal principle that classification for legislative purposes is rationally justified is not discrimination and is permissible under state constitutional prohibitions against special legislation and the equal protection clause of the federal constitution. They ignore the fact that different types of property and different uses of property may be constitutionally classed differently for tax purposes so long as the classification has a reasonable relation to the objective to be accomplished.

In the case of pipelines, telephone systems, electrical systems, telegraph systems, railroads and any property that constitutes a continuous operating system located in more than one state taxing jurisdiction, it seems clear we are considering a type of property that differs substantially from one composed of land and structures with a situs in only one taxing jurisdiction. Add to this the fact that such systems receive monopoly-type protection from competition in the area they serve and the case for separate classification can hardly be denied.

What the proponents of this bill are asking for and what the railroads and others have already received are statutes that make reasonable classification, whether de facto or de jure, legislatively discriminatory without any concern for the rationality of the classification. If this is a proper interpretation of the equal protection clause, reason dictates that there exists serious constitutional problems with all taxes and most notably with the state and federal income taxes which contain multiple classes, otherwise called tax brackets, single taxpayers, married taxpayers, corporations and individuals.

It is suggested that a bill such as this may be justified on the basis of politics or economics but not on the basis that pipelines, oil or gas, are denied equal protection when they are for tax purposes placed in a classification that includes all properties that are similar in the respect that they are located in multiple taxing jurisdiction, are subject to more than average governmental regulation and protection and deal in products that constitute basic necessities to the customers they serve.

What the proponents are requesting is not equal protection; it is legislative classification that affords them treatment different than that afforded similarly situated properties and businesses. They are in effect requesting a law that will discriminate against other state assessed utility and public service companies and in California also against the home or business property that has just changed ownership or been newly constructed and is assessed at 100 percent of its market value.

Chairman RODINO. Thank you.

Mr. Roth is staff vice president of the Williams Co.

Mr. DELANEY. Excuse me, Mr. Chairman. I misquoted myself. May I just interrupt for a moment?

I was requested to make a statement that, hopefully, you would allow into the record, on behalf of the other States present and California, and I was wondering, would it be appropriate to do that now, or shall I wait until the end?

Chairman RODINO. You may do it now.

Mr. DELANEY. Do it now?

Chairman RODINO. You may insert it in the record now.

Mr. DELANEY. Yes, thank you.

Mr. Chairman, may I read it into the record, please?

Chairman RODINO. No, time does not permit.

Mr. DELANEY. All right.

[The statement follows:]

In behalf of my fellow State witnesses, I ask that the subcommittee strip this controversial State tax limitation from H.R. 2092. The case for it has not been made.

At the same time, we recommend that the Subcommittee obtain from the General Accounting Office a report covering two areas:

Number one: whether and the extent to which the States and their counties taxing methods and rates discriminate against interstate pipelines. The real issue is whether interstate pipelines are treated differently from intrastate pipelines and other similar public service companies.

Number two: whether the victims of any such discrimination are denied methods at the State and local levels to redress their grievances.

If there is per se discrimination without redress, we would agree that there may be a Federal role in this matter.

Chairman RODINO. Mr. Roth.

Mr. ROTH. Mr. Chairman and members of the committee, I want to thank you very much for allowing us to appear today.

I think we have something to add to the committee record, because our views are a little different perhaps than you have heard either from the proponents or the opponents.

Williams owns two interstate gas pipelines, one in seven Pacific Northwest and Rocky Mountain States, another that is principally located in Oklahoma, Kansas, and Missouri. These two gas pipelines, like those who were represented in the previous panel today, are interested in reducing cost wherever possible.

Like most taxpayers—and I think that includes probably everyone in this room—they also desire to pay no more than their fair share of taxes.

I can assure you that if this legislation is enacted, our pipelines will seek any relief entitled to them. That is an obligation we have to our customers, and that is one that we take very seriously as a company.

In discussing legislative issues affecting the company, we have always sought to explain the effects of legislation not only on ourselves but also on others. In this instance, we think the committee must also consider these effects on others.

If the committee decides to send legislation to the floor, it should adopt provisions that treat all interstate industries similarly situated in a like manner.

In addition to our two gas pipelines, we also own an interstate oil pipeline in the Midwest running from Oklahoma north to Minnesota and Wisconsin and from the Dakotas east to Illinois and Ohio.

For the committee's information, interstate oil pipelines, interstate electric utilities, as well as interstate gas pipelines are regulated by the FERC. The regulation may not be exactly the same, but it is basically similar, and we have been through 13 years now as the lead pipeline in the oil pipeline regulatory field.

We expect to see a matter on the Commission's agenda to tell us perhaps precisely now after 13 years how we will be regulated, but we are still very much regulated by the FERC.

In all the States in which we have interstate gas and/or oil pipeline facilities, gas and oil pipelines, whether interstate or intrastate in nature, electric utilities, telephone and telecommunications companies are all classified as utility property for ad valorem tax purposes and treated in a similar manner by the States. In other words, the treatment of utility property is uniform among that class.

While I am no constitutional expert, I agree with the gas pipelines that support this legislation that relief under current law is probably not available since these States treat all utility property alike.

An objective view is that these States aren't discriminating in the classical, constitutional sense of favoring intrastate over interstate property. Instead, at least in my view, in the 4-R and subsequent acts, Congress has discriminated against certain interstate industries by providing a judicial remedy for some that is not available for others.

H.R. 2092 provides a Federal judicial remedy only for gas pipelines and not for any other interstate utility industry, even though they are identically treated by the States at issue. We believe this bill is, itself, therefore, discriminatory.

We think the practical reality is that in times of increasing revenue pressure on State and local governments—with any revenue losses coming from the gas pipelines as a result of this legislation—those losses would simply have to be made up from the then shrunken base of utility property.

We do not believe the revenue will be made up in most instances by raising tax rates across the board but, instead, in the utility sector. This is a result we don't happen to think is right.

Obviously, we are concerned that our oil pipelines which are in this utility category will then have to bear increased taxes.

Moreover, I would point out, so would gas companies or electric utilities in States such as Kansas who are among our customers. So would the customers of oil pipelines in New Jersey, where fuel oil may be a competing fuel with natural gas and originates in pipelines that come from these same States at issue.

Therefore, we believe this legislation is, itself, discriminatory and does not really solve the discrimination problem, if there is one out there.

Instead, we could argue today that the only amendment necessary is one to provide equal treatment for oil and gas pipelines. That would serve our company's interest, but we also don't think that is good national policy either.

We believe the proper policy is that Congress treat all interstate utility property in a like manner. That is, it should provide the same remedies for any such utility industry. To do less at a time when State and local governments are experiencing increasing difficulties in raising revenues is to invite discrimination, or this legislatively determined discrimination, against some interstate utility industries, a result we believe is wrong and unfair.

If Congress wants to fix a problem, it should do so and not simply transfer that problem to other members of the class.

I would be pleased to respond to any questions the committee might have. Thank you.

[The statement of Mr. Roth follows:]

BEFORE THE
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF THE WILLIAMS COMPANIES
CONCERNING SECTION 4 OF H. R. 2092,
PIPELINE SAFETY AUTHORIZATIONS
H. REPT. 99-121, PART I

Submitted By
Barry N. Roth
Staff Vice President
Government Affairs
The Williams Companies

June 12, 1985

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE

I am Barry Roth, Staff Vice President - Government Affairs of The Williams Companies. On behalf of The Williams Companies, I appreciate this opportunity to offer our views concerning the ad valorem tax provisions contained in H. R. 2092, reauthorization legislation for the natural gas and hazardous liquid pipeline safety programs. Although the reauthorization legislation deals with both gas and oil pipelines, the provision reported by the Public Works Committee deals only with state ad valorem taxes on natural gas pipelines. Briefly, we oppose the legislation in its current form. If Congress believes that certain current state property tax practices are having negative impacts on interstate commerce - the underlying predicate of the reported provision - the bill will not end such practices in interstate commerce. Instead, the bill would simply cause the transfer of such taxes from one interstate utility industry to several other interstate industries. In this regard, the provision on H. R. 2092 is itself discriminatory and should not be adopted without amendment.

A brief description of The Williams Companies may be useful for the Committee. We are a diversified pipeline, energy and fertilizer company. Williams owns two major interstate gas pipeline systems. One serves the Pacific Northwest, while the other is the principal gas supplier to the states of Kansas and Missouri. We also own a major intrastate gas pipeline system in Louisiana, and an oil pipeline system that serves the Midwest

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from Oklahoma to Minnesota and Wisconsin and from the Dakotas, east to Illinois, Indiana, and Ohio. Furthermore, we have just announced plans to construct a fiber optics telecommunications system in the Midwest. In these various capacities we have had and will continue to have extensive dealings with ad valorem tax issues at the state and local level.

As a company, we neither support nor condone discriminatory state and local taxes. Historically, in all three of our interstate pipelines - the two gas lines and the oil line - we have vigorously opposed state taxes which we felt were either unconstitutional, excessive or unfair. We fully expect to have to continue to do so in state courts or in state administrative proceedings, regardless of whether this legislation is now enacted.

In our view, there are two issues before the Committee to examine in the context of H. R. 2092. First, is to clearly define what are the discriminatory practices that Congress seeks to prohibit in interstate commerce. The second issue is once that term is defined with some specificity, why should Federal "relief" be provided for certain interstate industries and no "relief" given for others.

In the states in which we have interstate gas and/or oil pipeline facilities, gas and oil pipelines (whether interstate or intrastate), electric utilities, telephone and telecommunications companies are all classified as utility property for ad valorem tax purposes, and treated in a similar manner. In some of these states, other commercial or industrial property is separately

classified such that the assessment ratio for utility property is different than for other commercial or industrial property. The question for the Committee to decide is therefore:

With respect to interstate utility property, is any assessment ratio for such property that is not the lowest ratio applied to any commercial or industrial property in that taxing jurisdiction, per se discriminatory?

With respect to H. R. 2092, an affirmative answer by the Committee to this question means that certain utility property in a state will be treated differently from other utility property. Moreover, in its present form, H. R. 2092 would suggest that any tax savings actually achieved by the gas pipelines would have to be made up by the other utilities in the state, whether or not they are interstate or intrastate in character. In this regard, the proposal before the Committee is defective. If the Committee finds that the current treatment of all utility property in a state in a similar manner results in discrimination, then it would appear to be obligated to eliminate that discrimination for all utility property so affected. The Committee should then provide an amendment to H. R. 2092 that would allow any interstate industry or any industry to seek Federal judicial relief, not just a single segment of this larger utility category.

I am not stating that legislation is necessary or unnecessary, that is a question for this Committee and Congress to decide after examining the issue. There is, however, no basis to continue to legislate in this area on the basis of a single industry at a time. To do so becomes an open invitation, if not

a blessing, for the states to treat those industries not graced with "4-R Act type protection" with tax treatment identical to that which Congress has found is improper. This is neither good policy nor fair. We urge the Committee to examine this problem carefully and act to assure that it does not unwittingly favor one industry over another, or just cause the transfer of taxes from one industry group to another.

The issues confronting this Committee today are ones that will be increasingly important in the next several years. State and local governments have already faced a constantly escalating problem in raising funds for their programs. Both the House and Senate have now voted to allow revenue sharing to be eliminated, and other Federal programs are to be eliminated or reduced as well. The President has also proposed tax reform legislation which would eliminate individual deductions for state and local taxes. There is little doubt that the states will be facing increasing difficulties in raising necessary revenues for the future. As a result, all state property taxpayers will be increasingly concerned in the future with any action by Congress that narrows the state property tax base. This is, therefore, not the time for Congress to pass an incomplete solution such as that contained in H. R. 2092.

Chairman RODINO. Thank you very much.

Mr. Roth, you are the vice president of a company that has a diversified pipeline and various other interests, but you nonetheless take a position opposite to other gas pipeline companies who support this legislation. I am therefore very interested in the observations you have made. Do you believe that the States would tax more heavily the other interstate facilities, such as oil pipelines or communications networks, if this legislation were passed?

Mr. ROTH. That is certainly our view, Mr. Chairman, and the reason is simply practical, political realities.

The States are under revenue pressure. Tax changes, cuts in the Federal expenditures are only going to increase those situations for the States.

They could increase tax rates across the board for all industries or for even residential taxpayers. We think that is a less likely result in that climate, that they will focus first on the bulk of those increases from the utility property.

So we are not solving discrimination, if there is discrimination in Congress' view, in the approach in H.R. 2092.

Chairman RODINO. Would you say that these other interstate facilities are currently subject to discriminatory State taxation?

Mr. ROTH. We are subject to the same taxation scheme the gas pipelines are. To the extent the 4-R Act gives certain interstate industries guarantees from certain rates, then we are equally subject to that discrimination.

Again, from a constitutional sense, I think the gas witnesses, today and before the Senate Commerce Committee last year, and members of the committee themselves have recognized from a traditional constitutional sense that's not discrimination. It's discrimination to treat interstate industries probably in different manners, but that has come about primarily, we think, because of what Congress has done to date.

Perhaps the most telling criticism of the previous congressional action is the problem you create for interstate industries when you act selectively rather than acting in a general legislative provision that is available for all to use.

Chairman RODINO. Has there been any indication made to you by State authorities that if this legislation were passed they would take that kind of action?

Mr. ROTH. In my day-to-day activities, I generally don't deal with the State taxing authorities. These witnesses representing the States do. Some of our property tax people, both within the regulated utility and in the parent company, feel the likely result is at times when there is a revenue crunch on the States that they will focus on that, and I'm not sure that that's based on specific conversations or just general experience.

Chairman RODINO. Do you have any information as to whether a shifting of the tax burden occurred after Congress enacted the provisions for the railroads, airlines, and trucks.

Mr. ROTH. I'm just not knowledgeable enough to answer that. I'd be happy to check with our people, the experts in our company, and get their views.

[The information follows:]

The best example of whether the tax savings would be shifted to the remaining industries within the utility sector comes from the operation of the property tax system in Oklahoma. The Oklahoma Tax Commission has statutory discretion in setting the assessment ratio, i.e., the percentage of assessed value against which property taxes are levied by the local governments. In both 1984 and 1985, the Tax Commission indicated informally that they expected the assessment ratio on utility property would be set at a 25 percent rate. However, when all the administrative appeals of state assessed property were completed, they found they had lowered the assessed value of utility property such that it was necessary to set the actual assessment ratio at 26.25 percent. In other words, the assessment ratio was set at a level to raise the tax revenues that were expected to be needed at the local level. If one segment of the utility sector is removed from this class, it can reasonably be expected that Oklahoma will set a higher assessment ratio on the remaining members of the utility class in order to lessen or eliminate any potential revenue loss at the local levels.

While we have generally seen increases in property taxes since passage of the 4-R and subsequent Acts, it is not possible to attribute these increases specifically to tax revenues lost from these other "protected" industries.

Chairman RODINO. I have a related question for the State representatives. One of the arguments that each of you has made against this legislation is that it will effectively discriminate against other interstate operations such as oil pipelines, electric utilities, and communication systems.

But isn't it up to the States to determine whether they want to treat these other interstate facilities differently than natural gas pipelines? Doesn't the State legislature have the power to ensure that this type of discrimination does not occur?

Ms. BONEBRAKE. To respond to that on behalf of the State of Kansas, the Kansas Legislature has the power to classify property to some extent, as do the voters of the State of Kansas.

If Congress enacts this legislation, which would mandate that gas pipelines be treated as other commercial and industrial properties, they get a tax break due to the failure of the State to reappraise its real estate each and every year. We would continue to treat all other public utilities as we have right now at the statutory level as well as the personal property.

So it would create a special classification of taxpayers, as has the Railroad Act created a special class of taxpayers. They are paying a lesser rate than other public utilities and a lesser rate than intrastate railroads in the State of Kansas, of which we have two.

Chairman RODINO. Ms. Cox.

Ms. Cox. Mr. Chairman, in Oklahoma, we have four classes of property: public service corporation property, real estate, personal property, and now we have railroads.

If we were to segregate, as this bill would do, the interstate gas pipeline companies, the legislature would have to do something to rewrite our classification statutes.

What they would do I have not thought about, and I could speculate that they may decide to put commercial and real property—the commercial and industrial property—into the classification with other public service, so they could treat them all the same. I do not know.

But there would need to be State legislation to handle the problem. Otherwise, we are subject to attack under our constitutional uniformity mandate.

Chairman RODINO. Mr. Delaney.

Mr. DELANEY. Mr. Chairman, I think in California we would have the situation where a class would be created that would segre-

gate out one of the types of property now included in State-assessed property.

What would follow then would be the other properties in that classification would say there is either a lack of uniformity under State law or there is lack of equal protection under Federal law, and they would sue us to see that they are brought down to the same level, which would be a tremendous loss in revenue if we take all the State-assessed property in California.

So I don't think we can just arbitrarily say, well, we are going to classify each electric company, each railroad, each telephone company in a different class and in some way or another that is going to work out and be OK.

We know that our taxpayers in California are very sophisticated, and they will not miss the opportunity to show us where we are discriminating against them if we put one State assessee in a separate category for purposes of tax.

Chairman RODINO. I think, Mr. Delaney, if I may summarize your statement, you suggest that the proponents of the legislation haven't made their case that discrimination exists against interstate gas pipelines, and thus would justify the adoption of this proposed legislation. Is that correct?

Mr. DELANEY. That is correct, Mr. Chairman.

I haven't seen any study. The only thing I have heard as a basis for saying and concluding there is discrimination is that there are classifications, but, as I said earlier, that is not proof of discrimination.

Chairman RODINO. If that is the case, what would be the harm of this legislation? If there isn't, in fact, any discrimination on the part of the States, what do you have to fear?

Mr. DELANEY. What we have to fear is the fact that those who might benefit by so claiming will claim that classification is discrimination and will point to this act, which is not clear.

As I said, for one, it's not clear whether it applies to only interstate transporters of gas or if it also applies to intrastate exporters and distributors of gas that has been in interstate commerce.

There is one clause in section 20 I believe it's (b)(4)—that is almost not understandable. You can only get to what it means by deciding what it does not mean. It talks about, if I remember correctly, tax rate assessments, it talks about value classification, and then concludes that if you put those two together, you get tax rate uniformity.

That's gibberish. Tax rates are one thing, valuation is something else, but putting them together only tells you if the tax burden is equal, not if there is tax rate uniformity.

So what I am saying is that this bill will be used, and we will be in court for years, as we have been on the 4-R Act, trying to get the ground rules as to what it really means. A classic example is the one about sales ratio studies.

Now, under 4-R, the railroads must bring in a study to show in their language that there is discrimination. In California, such a study was made by the railroads. It was so bad that we, the State, were forced to start our own.

The first thing we had to do was go to the court and say, "Please, Your Honor, look at this sales ratio study, and you will find that it

does not contain the elements that a normal, recognized sales ratio study does," and we spent much, much time, first, getting the ground rules, what is a sales ratio study, and, second, going through all the information that they used doing our own study, and we are still, after some time, not able to resolve the question as to what the ratio difference is, if there is any.

So we are creating problems, not solving them, when you get into this.

Chairman RODINO. Do you think there is any basis, though, for making a distinction between taxing these pipelines and the various other forms of State taxation? Because pipelines are fixed and must travel along certain routes, it seems to me they are almost captive. Thus, if there is an undue burden as a result of some unfair taxation, they can't do what other industries can do, and that is, pick up and go.

Mr. DELANEY. I think, Mr. Chairman, it can do the same as others in the same classification. Electric utilities can't get up and go. They are captive in the same respect.

I do want to make a point that I missed earlier in that there seems to be some feeling that California is not impacted by this measure. I think we are, for the reason I said, concerning just truly what it means.

But, additionally, it must be noted that in the next couple or 3 years we read in trade journals that we will have interstate gas pipelines moving natural gas into the State of California. Then we will be directly impacted.

We stayed out of, basically, the 4-R Act legislation because we thought there is no problem. Classification is OK. California does not have statutory ratios. What is to worry?

Well, then, along came proposition 13, and now we do have, although somewhat difficult to measure, a de facto ratio difference, and now we have the railroads suing us when we thought there was no problem with a perfectly good bill.

So maybe we were not farsighted enough. We don't want to miss on this case.

Chairman RODINO. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

Mr. Roth, being seated with this particular panel and having observed the testimony of the panel that went before you, if oil lines were included in this legislation, would you be sitting with this panel or the previous panel?

Mr. ROTH. We probably would have been silent. We still would have said the best policy is to apply equal protection for all interstate utility industries or all interstate industries through a generic right.

Mr. SHAW. My concern about the favorable part of this legislation is that we are in a serious area. We have a delicate balance to preserve when we consider States' rights, and there are those of us who are very conscious of States' rights. We certainly want to preserve those rights, if possible, particularly when it comes to the taxation of property within its own bounds.

However, the problem here goes beyond the boundaries of Kansas and Oklahoma. Why should the people of my State of Florida, New Jersey, New York, or the other States, the consumer

States, why should they have to subsidize the taxes of Kansas and Oklahoma? This situation is also present, perhaps, to a lesser extent in California. Is it just simply because the gaslines go through those States? What is it?

I mean your taxes are added to the expense of the consumer, the cost of the gas. Why should my State send money, even indirectly, to Oklahoma?

Ms. Cox. Mr. Shaw, ad valorem tax has been in Oklahoma since statehood. We have had the tax on the pipelines. Oklahoma does not value that gas and place a tax on it. We do tax that tangible personal property, that pipeline, and any equipment there.

It is a matter of FERC that it permits the passthrough. The tax was there. It was not levied so that it could be passed through.

Mr. SHAW. Let me ask you a question with regard to your assessment procedure in Oklahoma.

Ms. Cox. Yes, sir.

Mr. SHAW. In Florida, we are required to assess property at fair market value. That includes real estate as well as the improvement on real estate. Does Oklahoma have a similar law?

Ms. Cox. Yes, we do. For real estate, for residential, commercial, and agricultural, we have valuation formulas for each of them. Basically both commercial and residential is a market value.

Mr. SHAW. What about pipelines?

Ms. Cox. The pipeline is a unit valuation that takes into consideration various appraiser-type approaches, cost approach, the income approach. Oklahoma does very little on the stock and debt approach.

Pipelines are not really frequently sold, although we have had a couple of them recently. So we don't have current sales information.

Mr. SHAW. Let me take that one step further then. The sales approach, the income approach, so what you are doing is, you are figuring out what the people down the line in other States are paying for that gas. Is that not correct?

Ms. Cox. It will be net operating revenues rather than any gross revenues to the company, but it is a very technical, very sophisticated system of valuing that a majority of our information is submitted by the pipelines from their FERC reports.

Mr. SHAW. So the revenue that you are considering in your evaluation comes from outside of the State of Oklahoma.

Ms. Cox. I would like to make special note of the fact that Oklahoma has always heavily relied upon the cost approach, which is a book value less depreciation of the tangible property.

It is the pipelines who have filed administrative protests, insisting that we lean very heavily on the income approach, which is much more flexible from year to year.

The income approach is there at the request of the pipelines. It has not always been there.

Mr. SHAW. Mr. Chairman, my time has expired. Could I have just 1 additional minute to follow up on that?

Mr. EDWARDS [acting chairman]. Yes.

Mr. SHAW. We had a situation in Florida, as many other States did, where the State was considering income from corporations derived outside of the State.

Various forms of legislation were filed here in the Congress. I don't think any of them have become law to date. Probably some of them are still kicking around. But the State of Florida eventually decided itself that this was not a wise way to go because we were running business out.

I'm not picking on Oklahoma, because I'm not sure where our gaslines come from; it may not be Oklahoma; it may be Kansas or elsewhere. But I have serious objections and serious concern that the revenue derived from the State of Florida would be used as a measure to collect taxes in other States, knowing that the taxation that you place on that property goes into the cost to the consumers of my particular State. That is my problem.

I think you have every right in the world to assess the property at its fair market value—that is, the value of the equipment—but I think when you start considering the other end of the pipeline that you have gone well beyond your State boundaries. Maybe you would like to comment on that statement.

Ms. Cox. I would, Mr. Shaw.

The approach tends to value the going system, and only a portion, if we are dealing with interstate pipelines, as we are in this case—only a portion of it will be allocated to Oklahoma based on an allocation factor of tangible property located in Oklahoma to property throughout the United States.

So we will only get a 10 percent or a 15 percent—whatever amount of the pipeline is located in Oklahoma.

The valuation is simply a means of coming up with a total dollar figure each year as to what the value of that real property—

Mr. SHAW. Stop right there. Do you look at the income statements of factories located in Oklahoma in deciding what taxes they are going to pay?

Ms. Cox. The system as it is currently in Oklahoma looks at the total system.

Mr. SHAW. So a factory would pay property taxes—or the assessment of a factory would be somewhat based upon how much money they are making?

Ms. Cox. For instance, on the General Motors plant in Oklahoma—

Mr. SHAW. General Motors is a good example.

Ms. Cox. That will be based on a replacement cost of the factory less depreciation.

If we go the replacement cost less depreciation on the pipelines, we may end up with a much greater value.

Mr. SHAW. You have depreciation for tax purposes, and then you have real appreciation. I'm not saying that you should be stuck with the book value that the company places on it, but I think that the replacement cost less the actual depreciation is what it is really worth, from the standpoint of what is actually in the ground or above the ground. That should be the limitation of your assessment.

Ms. Cox. I do not disagree with you, Mr. Shaw.

We, in fact, have pending in the Oklahoma Supreme Court right now—we valued a pipeline under the unit valuation method, and then the State board of equalization assessed it and extended the part of that pipeline that is in a county—one of our counties—back

down to that county for their value to be put on their assessment roles.

The county assessor took a look at it and said it's worth much more than this. So he has now filed the lawsuit challenging our method of valuation, and he wants to value it on the number of miles of pipe at current price less depreciation. Instead of having a \$1 million assessment for his county, he claims that he should have a \$3 million.

The valuation process is very difficult. It is my opinion that valuation—that's what the Burlington Northern Railroad challenged in Oklahoma under the 4-R Act—is the method that we used, and of course their allegation in that lawsuit has been that we did not give enough emphasis to income.

So that is, I think, what Oklahoma may likely face—those kinds of lawsuits challenging the methodology, the formula for valuing these pipelines. They are challenging them now at the administrative level, and there is no fear by the State of Oklahoma of going into Federal court and having the Federal court make a determination on these issues, except that we end up with the Federal judiciary valuing tangible and real property in Oklahoma.

If we are not using a proper valuation methodology, then the remedy is with the State board of equalization, who sets that formula and who sets that ratio, to go tell them we are doing it wrong, because it is very discretionary.

The U.S. Supreme Court—and that is where the burden of proof of "arbitrary and capricious" comes from—is that discretion with your assessor to value.

Mr. SHAW. Yes.

Mr. Chairman, I have already overdrawn on my time. I appreciate that.

Mr. EDWARDS. The time of the gentleman has expired.

The gentleman from Oklahoma, Mr. SYNAR.

Mr. SYNAR. I thank the chairman for yielding to me and giving me his time in this order.

Mr. Roth, as briefly as possible, if you could answer the following question. You are the only pipeline company that is presenting its views on this issue. Is your company discriminated against?

Mr. ROTH. In the traditional constitutional sense, where we can get relief under the Federal Constitution, no. In terms of the 4-R Act, yes.

Mr. SYNAR. OK.

Is there any State in which your company operates where you believe you cannot get a full, fair, and complete hearing of any complaints that you may have against the taxing jurisdiction?

Mr. ROTH. With respect to valuation, no. We have been in court, I think, in Iowa, for 5 years now on valuation, but we still think we are getting that resolved.

But to the extent that the discrimination is between interstate utility and commercial property, you can't get that in State court, Congressman, simply because it is a federally created right, and it is the Federal law that has caused the discrimination.

Mr. SYNAR. One final question. Would you agree that the proponents of this measure, whom you heard on the first panel, simply

wanted Congress to give them an end run around the States and avoid paying their fair share of property taxes?

Mr. ROTH. I think, in fairness, all taxpayers want to pay no more than their fair share and that Congress has created a precedent which I have questioned, as it applies to selective industries, whether it is a wise one, but that Congress established a precedent, and they are reacting no differently.

But there are obviously some fundamental federalism concerns here from the States' standpoint as well. We want to pay the least we can in taxes that is proper, and we intend to do that, whether it is a State court or Federal court.

Mr. GLICKMAN. Would the gentleman yield?

Mr. SYNAR. I yield the rest of my time to Mr. Glickman.

Mr. GLICKMAN. Mr. Roth, on the bottom of page 6 of this bill, there is the Breaux language. Have you had a chance to look at this crazy language that reads as follows, "The provisions of paragraphs 1, 2, and 3"—which are basically the prohibition against taxation that the States don't like in this bill—"shall not apply with respect to any State whose tax rate assessments and fair market value applications achieve rate uniformity for natural gas pipelines."

Does anybody know what that means?

Mr. ROTH. I think I know what Mr. Breaux thought it meant, and it's because of the testimony given before the Senate Commerce Committee on similar legislation last year and the different system that came about because of State litigation where the State assessed the property for the interstate and intrastate gas pipelines on a replacement cost basis, and the interstate gas pipelines and, I believe, the electric utilities went into court and told the State you can't assess it that way.

For Mr. Shaw, I would only point out that, as a pipeline, I am not willing to concede that the unitary method, which, looking at the overall value of the system, is necessarily wrong. I think it may produce lower taxes. I know that our tax people have used that method, and it produces each State coming up with a different value of the totality of the system but only applying it back.

So I understand the principle of your—

Mr. GLICKMAN. But would it be a fair statement that this section is, at the least, very, very confusing?

Mr. ROTH. I'm not sure what it does in terms of the legislative history and whether it would give the relief Mr. Breaux thought it would.

Mr. GLICKMAN. OK.

Ms. Bonebrake, do you have any feeling about that particular section of the bill that I just read from?

Ms. BONEBRAKE. In my opinion, that particular section has no application whatsoever. It is simply gobbledygook.

It in no way says that if you discriminate against interstate versus intrastate pipelines, you are OK, or it in no way says equalize between intra and inter and this act has no application. I think it is a nullity.

In my opinion, if the Federal courts were to look at it, they would say that Congress tried, but it is not the model of clarity.

Mr. GLICKMAN. If I may, before the light goes out, ask Ms. Bonebrake.

You read some numbers from the back of Mr. Cook's statement about the tax rates in Kansas—you know, the 30 percent and the 12 percent. The 30 percent was personal property.

The pipeline companies have let us know that in Kansas 90 percent of all property that is classified is at a 30-percent rate. Therefore, the fact that a convenience store was at a 12-percent rate is not all that relevant, since everything else is at the 30-percent rate anyway. I wonder if you might comment on that.

Ms. BONEBRAKE. It is our opinion that since the majority of the property owned by the pipeline is personal property and they are treated like all other personal property and all other public utilities, both of which are at the statutory rate of 30 percent, there is absolutely and positively no discrimination whatsoever in the State of Kansas as it relates to pipelines.

Mr. GLICKMAN. Therefore, to be given a commercial rate would be a preferential rate not utilizable by other people of the same class.

Ms. BONEBRAKE. That is absolutely correct, and it would, in fact, cause Kansas consumers to pay more for their natural gas than it would the consumers of the State of Florida.

Mr. GLICKMAN. Thank you very much.

Mr. EDWARDS. Mr. Dannemeyer.

Mr. DANNEMEYER. I would like to ask Mr. Delaney, are you appearing here on behalf of the State Board of Equalization from California or in your capacity as a representative of the National Association of Tax Administrators?

Mr. DELANEY. I am appearing on behalf of the State Board of Equalization of California and also for Mr. Nevins who has served as president of the National Association of Tax Administrators.

Mr. DANNEMEYER. Are the interests of those two groups consistent on this issue?

Mr. DELANEY. I am informed that they are.

Mr. DANNEMEYER. Do you believe that they are?

Mr. DELANEY. I do, sir.

Mr. DANNEMEYER. The reason I ask that question is because, although it is alleged that we Californians are not discriminating against ourselves—hopefully—but we are a net importer of natural gas in this country—we get a lot of it from the Middle West—that some of the States through which the pipelines come have discriminatory practices with respect to taxing the assessed value of pipelines.

So would it not be in the interest of Californians to give somebody a Federal cause of action in those States so that the issue of fair assessment could be adjudicated in order to protect consumers in California?

Mr. DELANEY. I believe only if you look at this whole problem from an economic viewpoint. If all you are trying to do is save money, sure, it would be right; it would be to our benefit to give the other States a leg up and the opportunity to reduce their taxes and hopefully reduce our price of gas.

But we are talking about a principle here. We have the oil pipelines going out, and their taxes are part of the costs of the product

they sell. So you can't just look at a problem and say, well, I'll vote this way because it happens to be beneficial today. You have got to look at the principles, and that is what the members of the State board of equalization seriously try to do.

Mr. DANNEMEYER. I am curious. What principle is at variance with equitable assessment of pipelines serving consumers in California?

Mr. DELANEY. None, if you properly describe "equitable." Equity is the taxation of similarly situated property and people in the same manner. Classification of different businesses, different property, different individuals, and different categories is not discrimination.

You see, we start this whole conversation with, if there is classification, we have got discrimination. That is not so.

Mr. DANNEMEYER. Maybe our difference is whether or not there is discrimination being practiced against the pipelines in some of these other States.

Mr. DELANEY. Yes, but there is no evidence—

Mr. DANNEMEYER. I have been informed that there is discrimination practiced on the assessment of a pipeline in States—well, the report identified 14.

None of us like discrimination. We have served the principle of equality before the law. Why shouldn't that principle serve to say we need the ability to adjudicate that interest as to which there allegedly is discrimination?

Mr. DELANEY. Congressman, I have heard the allegations that there is discrimination, but when I look to the testimony for the evidence, all I find is a statement that there are classifications. That is not evidence of discrimination, and to merely keep repeating that it is or that there is discrimination seems to me to fall short.

Mr. DANNEMEYER. I appreciate what you are saying, but what is wrong conceptually with giving to someone who claims to be the victim of discrimination the ability to go into a court system in order to prove their case? What is wrong with that?

Mr. DELANEY. Perhaps there is nothing wrong, if the legislation is crystal clear as to what they have to prove, whom they have to prove it to, and all the other things that will make rational people, who are not sitting here today, understand what the problem is and how it is to be solved.

But our experience with the 4-R Act is, that is not what that bill did, and I know this one is worse.

Mr. DANNEMEYER. I have to concede that, from the standpoint of artful drafting, it isn't exactly the model we would like to hold up to first-year law students.

Mr. DELANEY. That is what I have to say to you. Let's not give someone a club that we don't even know the size of. If we give them some benefit, let us at least know what we are giving to that person and what we have to do to show that we are not discriminating against them. Let us not just take it as an accepted fact that if there is difference, there is discrimination. That puts an impossible burden on the States. It is not a matter then of constitutional—

Mr. DANNEMEYER. Well, I appreciate your observations. I think we can work to improve the language to make clear the grounds that must be shown in order to establish discrimination.

Mr. DELANEY. Perhaps we can, and certainly we would be glad to assist in any way we can to get a good, clear bill that does just what the proponents say it is intended to and that will be understood in that way by everybody involved.

Mr. DANNEMEYER. Thank you.

Mr. EDWARDS. Mr. Shaw.

Mr. SHAW. Thank you, Mr. Chairman.

I want to address a question to the lady from Kansas.

At the end of Mr. Glickman's questioning, you made a statement, and I will paraphrase it—correct me if I am wrong—that if this legislation were to pass, the people in Kansas would be paying more for natural gas than the people in Florida. Is that what you said?

Ms. BONEBRAKE. That's what I said.

Mr. SHAW. Isn't the reason for this simply that you are assuming that you are going to continue to tax those lines lying totally within the State of Kansas?

Ms. BONEBRAKE. No. It is a twofold reason.

In the State of Kansas, gas which is taken from the Hugeton Field and all other gas fields in the State of Kansas, is subject to ad valorem tax, as are the pipelines. It comes as no particular shock, or should come as no particular shock, to anyone that the gas pipelines are located in areas where the natural gas is in Kansas.

Kansas taxes on a county-by-county basis. If you lower the level of assessment of the natural gas transmission line, leaving the State of Kansas with gas for Florida, and everything else remains the same, because it is intrastate property, and the State of Kansas chooses to do nothing, as it has with the classification that Congress has created for railroads, the intrastate pipelines will be assessed at 30 percent of fair market value; the interstate pipelines will be assessed at something less.

So going back to that county, when those dollars come off the interstate pipeline, it will go on to the intrastate pipeline serving Kansas customers and increase their taxes; it will go on to the gas bought by the intrastate consumers in Kansas, increasing their taxes.

So Kansas will get a double whammy, and we will pay for Florida consumers to use our natural resources.

It is much the same as Florida does now with your natural resource of weather. You tax Kansans who come into Florida to luxuriate in the winter, and it is your resource. It (gas) is our resource. We don't think we ought to have to pay more for our resources than you pay, and we are on equity now.

Mr. SHAW. But, now, there are a few Floridians who do go to Kansas, and we don't penalize them for that. [Laughter.]

Ms. BONEBRAKE. Not in the winter.

Mr. SHAW. But I think the question I originally asked—I think the answer is yes. The people of Kansas would pay a higher cost than the people of Florida only because the legislators in the State of Kansas chose to keep the law the way it was.

If you applied the same law to your own intrastate lines, then they would pay—well, they would actually pay less than Florida, because you would not have to transport it as far. But the tax mix would be the same as it comes out of Kansas.

Ms. BONEBRAKE. That is true, but what you are getting down to is, you are getting down to telling the States in this Union that we do not have the right to classify property, that farms, homes, and all commercial and industrial property should be on parity, and you are turning the Federal courts into tax assessors. You are nationalizing taxes.

Mr. SHAW. No.

Ms. BONEBRAKE. You are telling us we all have to be the same.

Mr. SHAW. I can argue with you all day on that. All we are saying is that when the Founding Fathers talked about interstate commerce and the power of the Federal Government therein, they intended a certain fairness. These Federal rights have been there for now over 200 years, or almost 200 years.

Ms. BONEBRAKE. I guess my view of what interstate commerce is is that the States cannot unduly burden interstate commerce. We are not.

Gas that is transported out of Kansas, as is gas transported within the State of Kansas, is all taxed the same. I do not see where we are burdening the State of Florida. We provide resources to those pipelines by way of benefits. We have police protection, we have fire protection, and we have to suffer with the public safety aspect when those pipelines develop a leak.

Mr. SHAW. I don't mean to regionalize this argument as to Florida. Perhaps the argument could be better made for people who use the gas for heating. It would be a rather weak argument to tell you how much it is going to cost to heat the swimming pools in Fort Lauderdale, and I shall not make that argument. But I think that when you are talking about the cost of heating in New York and New Jersey—and I have become somewhat an expert on the cost of heating since I have moved to Washington—I can take great sympathy with the plight of the people in those particular areas.

There is ample precedent. You are limited by Federal law on what you can do as far as charging trucks and automobiles—any type of transportation coming through your State. It is only recognizing, as I see it, a pipeline as another form of transportation.

Ms. BONEBRAKE. I think it may be recognized that the pipeline is another form of transportation, but as long as we treat them the same as we treat all other pipelines and all other personal property, I don't think that we have treated them differently. I don't see how we have discriminated.

Mr. SHAW. Let me ask you another question.

Ms. BONEBRAKE. Yes.

Mr. SHAW. Let's jump on Alabama for a few minutes.

Ms. BONEBRAKE. OK.

Mr. SHAW. What if the State of Alabama were to make it so expensive with respect to their pipelines that no one in Florida would buy Kansas gas? What would you think of that?

Ms. BONEBRAKE. To the extent that Alabama classified pipelines at a level far in excess of other properties within the State of Alabama, that would be their State's prerogative to do so.

Mr. SHAW. So you think Alabama then should have the power to put you out of business?

Ms. BONEBRAKE. No. I don't think they should have the power to put us out of business.

Mr. SHAW. The power of taxation is a power of destruction. That has long been recognized.

Ms. BONEBRAKE. I understand that. I guess if I were from the State of Florida, I would be very concerned about the statistics that have been offered before Congress, because Florida right now is involved in 4-R Act litigation because you discriminate, according to the railroads, against them.

The same standard of proof is going to be applicable to the natural gas pipeline that comes into your State. If the railroads have a cause of action against the State of Florida, so will the natural gas pipeline. So you may see the same shift of tax on to your consumers and on to your homes and on to your motels as we will see in Kansas.

The list that you have been given leaves out 12 other States that have been sued by the railroads, and the burden of proof is the same. You are comparing pipelines with all other commercial and industrial property, and all that other commercial and industrial property is the side of the equation that gives the railroads their cause of action.

Some States aren't mentioned here, and seven of them have, in fact, been declared discriminatory against the railroads, and relief has been granted. There are five cases that are still pending.

I think the statistics are totally wrong. If there is a tax relief that is granted by this bill, Florida could also be subject to litigation because you have been identified as a discriminator against railroads. So what your consumers gain they may pick up in property taxes.

Mr. SHAW. Well, the railroad laws are enacted, but I certainly would in no way want to subject the people of Kansas to anything I'm not willing to subject the people of Florida to. But I think that what we are looking for here is basic fairness.

I would like to compliment this panel of witnesses. I was in another subcommittee meeting and was unable to hear the first panel of witnesses, which I regret. But I think you very articulately put forward and defended a position which I think is basically undefensible.

Ms. BONEBRAKE. Thank you.

Mr. SHAW. But I compliment each and every one of you for doing an excellent job. Thank you.

Mr. EDWARDS. Did the gentleman say "unprincipled" or "principled"?

Mr. SHAW. No; "defensible"—"undefensible."

Mr. EDWARDS. OK.

Mr. SHAW. Please don't say "unprincipled." I didn't mean to imply that. [Laughter.]

Mr. EDWARDS. Without objection, the statement of Congressman Dannemeyer is inserted in the record at this point.

[The statement follows:]

STATEMENT OF THE HON. WILLIAM E. DANNEMEYER

Committee on the Judiciary
Subcommittee on Monopolies and Commercial Law

SECTION 4 OF H.R. 2092, TAX DISCRIMINATION

Mr. Chairman, I appreciate the prompt scheduling of this hearing on Section 4 of H.R. 2092, the reauthorization bill for the natural gas and hazardous liquids pipeline safety programs.

I am an original co-sponsor of this bill, by request, as Ranking Minority Member of the Energy and Commerce Subcommittee on Fossil and Synthetic Fuels. Energy and Commerce shares primary jurisdiction with the Committee on Public Works. Section 4, on tax discrimination against interstate pipelines, was added by Public Works and referred to this Committee because of our jurisdiction over state taxes affecting interstate commerce.

While I regret that Energy and Commerce Committee was not given the opportunity to study it, I have reviewed the issue for this hearing. Those who seek this provision have legitimate concerns about the way states assess property taxes on interstate pipelines, but the language may need to be clarified.

Section 4 raises three questions:

1. What property is subject to federal court review?

Supporters of Section 4 have stated they intend it to apply only to interstate pipelines, as that term of art is understood under the Natural Gas Act, which basically means transmission property of the same entity which crosses state lines. However, Section 4 now covers property in interstate commerce, a broader definition which could reach intrastate pipelines. This can be corrected with a tighter definition.

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2. What is the standard for review?

The Breaux Amendment in the Public Works Committee has muddied the waters considerably. We must determine from our witnesses just what "rate uniformity" means so that we are clear on the standard to be applied by federal courts. It is unclear whether the standard is to compare interstate and intrastate pipelines, or whether it also includes comparing pipelines to surrounding commercial and industrial property.

3. Finally, if relief is granted by federal courts, how will this be reflected in consumer gas rates?

While property taxes amount to pennies per unit of natural gas, even that small amount can affect the purchasing decisions of those who can burn oil or natural gas and affects which pipeline's natural gas is taken under state public utility commission sequencing formulas. I would like to insert into the record a letter I requested from the Federal Energy Regulatory Commission, which has jurisdiction over interstate pipeline rates, on generally how property taxes are reflected in rate changes.

Again, Mr. Chairman, I look forward to working with my subcommittee colleagues on this legislation.

Mr. EDWARDS. I guess I just have one question, Mr. Delaney.

There is no allegation that California discriminates against interstate pipelines. That is very clear. So is it your position or your belief that California would have a lower amount of tax collections if this bill went through and California, in essence, lost this traditional power that it has?

Mr. DELANEY. Mr. Edwards, if the bill is interpreted to apply to our public utility gas companies, our tax loss we calculate to be approximately \$17 million.

Now, the point has been made by others, it doesn't apply, but as I think I mentioned, that is verbal assurance only, and I'm not sure they will sing the same song when it gets down to cases.

Additionally, as I mentioned, I think—perhaps you missed that part—there are planned interstate transporting gas companies coming to California, and, to the extent that those particular lines are given preferential treatment, there will be additional tax loss added to that \$17 million I mentioned.

Now, if we are wrong on how the act would apply, I think we should do more than rely on the interpretations of those who want the bill. I mean, is that the fox in the chicken house or not? Let's put it on the line. Let's have the language describe what it applies to, how, and what the intentions of the bill are.

Mr. EDWARDS. Well, we thank the witnesses very much for very helpful testimony.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

Text of H.R. 2092

99TH CONGRESS
1ST SESSION

H. R. 2092

[Report No. 99-121, Parts I and II]

To amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations for fiscal years 1986 and 1987, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 1985

Mr. HOWARD (for himself, Mr. SNYDER, Mr. ANDERSON, Mr. SHUSTER, Mr. SHARP, and Mr. DANNEMEYER) (by request) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Public Works and Transportation

MAY 15, 1985

Reported from the Committee on Public Works and Transportation with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 21, 1985

Reported from the Committee on Energy and Commerce with an amendment and referred to the Committee on the Judiciary for a period ending not later than July 8, 1985, for consideration of such provisions of section 4 of the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation as fall within the jurisdiction of the Committee on the Judiciary pursuant to clause 1(m), rule XI, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on April 17, 1985]

A BILL

To amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize

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appropriations for fiscal years 1986 and 1987, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. NATURAL GAS PIPELINE SAFETY AUTHORIZATIONS.**

4 *Section 17(a) of the Natural Gas Pipeline Safety Act*
5 *of 1968 (49 U.S.C. App. 1684(a)) is amended—*

6 *(1) by striking out "and" at the end of paragraph*
7 *(2);*

8 *(2) by striking out the period at the end of para-*
9 *graph (3) and inserting in lieu thereof a semicolon;*
10 *and*

11 *(3) by adding at the end thereof the following new*
12 *paragraphs:*

13 *"(4) \$3,450,000 for the fiscal year ending Sep-*
14 *tember 30, 1986; and*

15 *"(5) \$3,600,000 for the fiscal year ending Sep-*
16 *tember 30, 1987."*

17 **SEC. 2. AUTHORIZATIONS FOR FEDERAL GRANTS-IN-AID.**

18 *(a) COMBINED PROGRAM.—Section 17 of the Natural*
19 *Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1684) is*
20 *amended by adding at the end thereof the following new*
21 *subsections:*

22 *"(c) For the purpose of carrying out the Federal grants-*
23 *in-aid provisions of section 5(d) of this Act and section*
24 *205(d) of the Hazardous Liquid Pipeline Safety Act of 1979*

1 (49 U.S.C. App. 2004(d)) there are authorized to be
2 appropriated—

3 “(1) \$5,000,000 for the fiscal year ending Sep-
4 tember 30, 1986; and

5 “(2) \$5,230,000 for the fiscal year ending Sep-
6 tember 30, 1987.

7 “(d) Not less than 5 percent of any amounts appropri-
8 ated for carrying out the Federal grants-in-aid provisions for
9 any fiscal year beginning after September 30, 1985, shall be
10 available only for carrying out the Federal grants-in-aid pro-
11 visions of section 205(d) of the Hazardous Liquid Pipeline
12 Safety Act of 1979 (49 U.S.C. App. 2004(d)).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 5(d)(2) of such Act (49 U.S.C. App.
15 1674(d)(2)) is amended—

16 (A) by striking out “authorized to be appro-
17 priated by section 17(b) of this Act” and inserting
18 in lieu thereof “appropriated for carrying out the
19 Federal grants-in-aid provisions of this subsec-
20 tion”; and

21 (B) by striking out “(1) of this section” and
22 inserting in lieu thereof “(1) of this subsection”.

23 (2) Section 205(d)(2) of the Hazardous Liquid
24 Pipeline Safety Act of 1979 (49 U.S.C. App.
25 2004(d)(2)) is amended by striking out “authorized to

1 *be appropriated by section 214 of this title" and insert-*
2 *ing in lieu thereof "appropriated for carrying out the*
3 *Federal grants-in-aid provisions of this subsection".*

4 (3) *Section 214(a) of the Hazardous Liquid Pipe-*
5 *line Safety Act of 1979 (49 U.S.C. App. 2013(a)) is*
6 *amended by inserting after "subsection (b)" the follow-*
7 *ing: "or section 17(c) of the Natural Gas Pipeline*
8 *Safety Act of 1968 (49 U.S.C. App. 1684(c))".*

9 (4) *Section 17(a) of the Natural Gas Pipeline*
10 *Safety Act of 1968 (49 U.S.C. App. 1684(a)) is*
11 *amended by inserting after "subsection (b)" the follow-*
12 *ing: "or (c)".*

13 **SEC. 3. HAZARDOUS LIQUID PIPELINE SAFETY AUTHORIZA-**
14 **TIONS.**

15 *Section 214(a) of the Hazardous Liquid Pipeline*
16 *Safety Act of 1979 (49 U.S.C. App. 2013(a)) is amended—*

17 (1) *by striking out "and" at the end of paragraph*
18 *(2);*

19 (2) *by striking out the period at the end of para-*
20 *graph (3) and inserting in lieu thereof a semicolon;*
21 *and*

22 (3) *by adding at the end thereof the following new*
23 *paragraphs:*

24 (4) *\$875,000 for the fiscal year ending Septem-*
25 *ber 30, 1986; and*

1 “(5) \$912,000 for the fiscal year ending Septem-
2 ber 30, 1987.”.

3 **SEC. 4. TAX DISCRIMINATION AGAINST NATURAL GAS TRANS-**
4 **MISSION PROPERTY.**

5 (a) *IN GENERAL.*—The Natural Gas Pipeline Safety
6 Act of 1968 (49 U.S.C. App. 1671-1686) is amended by
7 adding at the end thereof the following new section:

8 “TAX DISCRIMINATION AGAINST NATURAL GAS
9 TRANSMISSION PROPERTY

10 “SEC. 20. (a) *As used in this section—*

11 “(1) ‘assessment’ means valuation for a property
12 tax levied by a taxing district;

13 “(2) ‘assessment jurisdiction’ means a geographi-
14 cal area in a State used in determining the assessed
15 value of property for ad valorem taxation;

16 “(3) ‘natural gas transmission property’ means
17 property owned or used for the transportation of natu-
18 ral gas by a natural gas company providing transpor-
19 tation of natural gas by pipeline in interstate com-
20 merce;

21 “(4) ‘commercial and industrial property’ means
22 all real and personal property, other than transporta-
23 tion property, and land used primarily for agricultural
24 purposes or timber growing, devoted to a commercial or
25 industrial use and subject to a property tax levy; and

1 “(5) ‘natural gas company’ has the meaning such
2 term has under the Natural Gas Act.

3 “(b) The Congress finds and declares that the following
4 acts unreasonably burden and discriminate against interstate
5 commerce, and a State, subdivision of a State, or authority
6 acting for a State or subdivision of a State may not do any
7 of them:

8 “(1) assess natural gas transmission property at a
9 value that has a higher ratio to the true market value
10 of the natural gas transmission property than the ratio
11 that the assessed value of other commercial and indus-
12 trial property in the same assessment jurisdiction has
13 to the true market value of the other commercial and
14 industrial property;

15 “(2) levy or collect a tax on an assessment that
16 may not be made under paragraph (1) of this subsec-
17 tion; and

18 “(3) levy or collect an ad valorem property tax on
19 natural gas transmission property at a tax rate that
20 exceeds the tax rate applicable to commercial and in-
21 dustrial property in the same assessment jurisdiction.
22 The provisions of paragraphs (1), (2), and (3) of this subsec-
23 tion shall not apply with respect to any State whose tax rate
24 assessments and fair market value applications achieve rate
25 uniformity for natural gas pipelines.

1 “(c) Notwithstanding section 1341 of title 28, United
2 States Code, and without regard to the amount in controver-
3 sy or citizenship of the parties, a district court of the United
4 States has jurisdiction, concurrent with other jurisdiction of
5 courts of the United States and the States, to prevent a viola-
6 tion of subsection (b) of this section. Relief may be granted
7 under this subsection only if the ratio of assessed value to
8 true market value of natural gas transmission property ex-
9 ceeds, by at least 5 percent, the ratio of assessed value to true
10 market value of other commercial and industrial property in
11 the assessment jurisdiction. The burden of proof in determin-
12 ing such assessed value and true market value shall be gov-
13 erned by State law. If the ratio of the assessed value of other
14 commercial and industrial property in the assessment juris-
15 diction to the true market value of all other commercial and
16 industrial property cannot be determined to the satisfaction of
17 the district court through the random-sampling method
18 known as a sales assessment ratio study, the court shall find
19 that—

20 “(1) an assessment of the natural gas transmis-
21 sion property at a value that has a higher ratio to the
22 true market value of the natural gas transmission
23 property than the assessed value of all other property
24 subject to a property tax levy in the assessment juris-

1 diction has to the true market value of all such other
2 property; and

3 "(2) the collection of an ad valorem property tax
4 on the natural gas transmission property at a tax rate
5 that exceeds the tax rate applicable to taxable property
6 in the taxing district;

7 are violations of this section. Any sales assessment ratio
8 study conducted pursuant to this subsection shall be carried
9 out under statistical principles applicable to such study.

10 "(d) It is the sense of the Congress that any savings
11 accruing to any person (including any natural gas company)
12 by reason of the enactment and implementation of this section
13 should be passed on to the ultimate consumers of natural
14 gas."

15 (b) *EFFECTIVE DATE.*—The amendment made by sub-
16 section (a) of this section shall take effect January 1, 1986.

17 SECTION 1. NATURAL GAS AUTHORIZATION.

18 (a) **PROGRAM ADMINISTRATION.**—Section
19 17(a) of the Natural Gas Pipeline Safety Act of
20 1968 (49 U.S.C. App. 1684(a)) is amended—

21 (1) by striking out "and" at the end of
22 paragraph (2);

23 (2) by striking out the period at the end
24 of paragraph (3) and inserting in lieu thereof
25 "; and"; and

1 (3) by adding at the end thereof the fol-
2 lowing new paragraph:

3 “(4) \$3,364,310 for the fiscal year ending
4 September 30, 1986.”.

5 (b) STATE GRANTS-IN-AID.—Section 17(b) of
6 the Natural Gas Pipeline Safety Act of 1968 (49
7 U.S.C. App. 1684(b)) is amended—

8 (1) by striking out “and” at the end of
9 paragraph (2);

10 (2) by striking out the period at the end
11 of paragraph (3) and inserting in lieu thereof
12 “; and”; and

13 (3) by adding at the end thereof the fol-
14 lowing new paragraph:

15 “(4) \$4,500,000 for the fiscal year ending
16 September 30, 1986.”.

17 (c) ALLOCATION.—Section 17 of the Natural
18 Gas Pipeline Safety Act of 1968 (49 U.S.C. App.
19 1684), as amended by subsections (a) and (b), is
20 amended further by adding at the end thereof the
21 following new subsection:

22 “(c) In allocating the funds authorized to be
23 appropriated by subsection (b) of this section, the
24 Secretary shall take into account the extent to
25 which each qualifying State agency exercises ju-

1 jurisdiction over intrastate pipeline facilities within
2 that State.”.

3 SEC. 2. HAZARDOUS LIQUID AUTHORIZATION.

4 (a) PROGRAM ADMINISTRATION.—Section
5 214(a) of the Hazardous Liquid Pipeline Safety
6 Act of 1979 (49 U.S.C. App. 2013(a)) is amended—

7 (1) by striking out “and” at the end of
8 paragraph (2);

9 (2) by striking out the period at the end
10 of paragraph (3) and inserting in lieu thereof
11 “; and”; and

12 (3) by adding at the end thereof the fol-
13 lowing new paragraph:

14 “(4) \$841,079 for the fiscal year ending
15 September 30, 1986.”.

16 (b) ALLOCATION.—Section 214 of the Hazard-
17 ous Liquid Pipeline Safety Act of 1979 (49 U.S.C.
18 App. 2013), as amended by subsection (a), is fur-
19 ther amended by adding at the end thereof the fol-
20 lowing new subsection:

21 “(c) In allocating the funds authorized to be
22 appropriated by subsection (b) of this section, the
23 Secretary shall take into account the extent to
24 which each qualifying State agency exercises ju-

1 jurisdiction over intrastate pipeline facilities within
2 that State.”.

3 SEC. 3. REPORTS.

4 (a) GRANTS MERGER REPORT.—

5 (1) The Secretary of Transportation shall
6 prepare a report which shall contain details
7 of the Secretary's recommendations with re-
8 spect to the potential merger and joint ad-
9 ministration of the Federal grants-in-aid pro-
10 visions of section 5(d) of the Natural Gas
11 Pipeline Safety Act of 1968 (49 U.S.C. App.
12 1674(d)) and section 205(d) of the Hazardous
13 Liquid Pipeline Safety Act of 1979 (49 U.S.C.
14 App. 2004(d)).

15 (2) In preparing the report required by
16 paragraph (1), the Secretary shall consult
17 with appropriate State authorities, and the
18 Secretary shall include in such report a sum-
19 mary of the views and recommendations of
20 such State authorities.

21 (b) GRANTS ALLOCATION REPORT.—

22 (1) The Secretary of Transportation shall
23 prepare a report which shall contain an ex-
24 planation of the method by which the Secre-
25 tary allocates funds to the various States

1 under section 5(d) of the Natural Gas Pipe-
2 line Safety Act of 1968 (49 U.S.C. App.
3 1674(d)) and section 205(d) of the Hazardous
4 Liquid Pipeline Safety Act of 1979 (49 U.S.C.
5 App. 2004(d)).

6 (2) The Secretary shall publish in the
7 Federal Register, as a matter of public infor-
8 mation, the explanation contained in the
9 report required by paragraph (1).

10 (c) REPORT DATE.—The report required by
11 subsections (a)(1) and (b)(1) shall be submitted to
12 the Congress no later than October 1, 1985.

13 SEC. 4. ACCIDENT REPORTING REQUIREMENTS.

14 (a) NATURAL GAS.—Section 5(a) of the Natu-
15 ral Gas Pipeline Safety Act of 1968 (49 U.S.C. App.
16 1674(a)) is amended by striking out “\$5,000” and
17 inserting in lieu thereof “the amount that the Sec-
18 retary establishes by regulation”.

19 (b) HAZARDOUS LIQUID.—Section 205(a) of
20 the Hazardous Liquid Pipeline Safety Act of 1979
21 (49 U.S.C. App. 2004(a)) is amended by striking out
22 “\$5,000” and inserting in lieu thereof “the amount
23 that the Secretary establishes by regulation”.

1 SEC. 5. USER FEE PROPOSAL.

2 The Secretary of Transportation shall, no
3 later than October 1, 1985, submit to the Congress
4 a report which contains—

5 (1) a specific proposal for the establish-
6 ment of a Federal system of user fees based
7 on the utilization of natural gas and hazard-
8 ous liquid pipeline facilities, the proceeds of
9 which would be used to maintain and im-
10 prove the safety of such pipeline facilities;

11 (2) the views of the Secretary with re-
12 spect to such proposal; and

13 (3) any recommendations of the Secre-
14 tary for legislation which may be necessary
15 in connection therewith.

○

APPENDIX

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 11, 1985

Honorable Peter W. Rodino, Jr.
Chairman, Subcommittee on Monopolies
and Commercial Law
U.S. House of Representatives
Washington, D.C. 20515

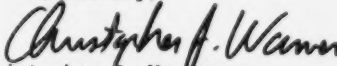
Dear Mr. Chairman:

In his absence, Chairman O'Connor has asked me to respond to the invitation to testify on Wednesday, June 12, 1985, at a hearing of the Judiciary Subcommittee on Monopolies and Commercial Law. I understand the Subcommittee will be discussing a provision H.R. 2092 as reported by the Committee on Public Works and Transportation to eliminate alleged tax discrimination against natural gas transmission property. Due to a very busy Commission agenda, the relative short time notice of the hearing, and the complexity of the issue, I regret the Commission is unable to supply a witness to testify on Wednesday.

However, enclosed is a copy of testimony on this issue which was presented by Kenneth A. Williams, Director of the Office of Pipeline and Producer Regulation, at a Senate hearing last year. I believe it will respond to many of the questions the Subcommittee may have. In addition, Chairman O'Connor will be happy to answer for the record any written questions of the Subcommittee Members.

We stand ready to be of assistance.

Sincerely,



Christopher J. Warner
Associate General Counsel
Legislation, Regulation and
Congressional Affairs

Enclosure

cc: Honorable Hamilton Fish, Jr.
Ranking Minority Member

BEST COPY AVAILABLE

TESTIMONY OF KENNETH A. WILLIAMS
DIRECTOR, OFFICE OF PIPELINE AND PRODUCER REGULATION
FEDERAL ENERGY REGULATORY COMMISSION
SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
SURFACE TRANSPORTATION SUBCOMMITTEE

September 28, 1984

It is a pleasure to appear before the Surface Transportation Subcommittee and to offer whatever assistance I can to your deliberations on the proposed legislation in S.2932. My appearance is on behalf of Raymond J. O'Connor, Chairman of the Federal Energy Regulatory Commission. It is my Office that has the technical responsibility for evaluating the costs either incurred or expected to be incurred by interstate natural gas and oil pipelines for the purpose of determining their appropriate rate treatment. To the extent that the technical staff questions whether certain costs should be included in the rates of a pipeline company, it generally raises these matters as issues in formal proceedings. Formal proceedings may be instituted as the result of rate change filings by interstate pipelines or through investigations initiated by the Commission. Technical staff participates in formal proceedings through discovery, the presentation of exhibits and testimony, cross examination of witnesses and the submission of briefs. The record made in these formal proceedings ultimately provides the Commission with the information necessary to resolve issues on their merits.

- 2 -

The Commission's approach toward oil pipeline rate regulation is currently under review in the Federal courts. Therefore, I would like to confine my testimony to the rate regulation of natural gas pipelines. Moreover, I would like to first address the methodology employed by the Commission in determining the costs, including taxes other than income taxes, properly includable in gas pipeline rates.

Under Section 4 of the Natural Gas Act, no natural gas pipeline company can change its rates without first filing a notice with the Commission and the public. In implementing this section of the Act, the Commission imposed detailed filing requirements to support the proposed rate levels. Each element of cost must be clearly identified and supported. For ratemaking purposes, the Commission employs a "test period" approach which requires the pipelines to file twelve months of actual experience with adjustments for the subsequent nine months. Each element of cost is evaluated against both the actual experience and the adjustments to that actual experience. Taxes such as ad valorem taxes are generally summarized by state in the filings, but more detailed information is obtained during the investigation and discovery phases.

For the most part, the initial evaluation of taxes such as ad valorem taxes is to determine the reasonableness of the projected level of such taxes. If it appears that the taxes attributable to certain state or local taxing authorities may be excessive, the pipeline is required to support the level of taxes paid or payable.

- 3 -

The pipeline may cite as support the tax rate or the method of assessing value employed by the taxing authority. However, the Commission will look first to the pipeline to ensure that the taxes paid or expected to be paid are reasonable and do not discriminate against the company and its customers. Most pipelines have tax departments which have the expertise to challenge the taxes levied by individual taxing authorities. It is unreasonable to expect that the Commission would have either the staff or the data necessary to challenge the taxes levied by the hundreds of taxing authorities that are involved with each pipeline system. That is not to say that the Commission is without recourse where state and local taxes are excessive or discriminatory; it could possibly challenge such taxes as discriminating against interstate customers and consumers. However, the Commission has found it more effective to impose upon the pipelines the obligation to ensure that the taxes paid are not excessive or discriminatory and to preclude the recovery of taxes that do not meet these criteria.

Natural gas pipelines typically recover taxes other than income taxes through general rate change filings. This means that absent such filings, the pipelines are unable to recover increases in these taxes, all other things being equal. The Commission has not been willing to permit the tracking of changes in state and local taxes primarily because to do so, would reduce the incentive for pipelines to resist the payment of excessive or discriminatory taxes.

- 4 -

To the extent that state or local taxes discriminate against interstate pipelines, there exists the possibility that customers served by these pipelines will incur costs that should more appropriately be borne by state and local taxpayers. If the pipelines are unable to recover these taxes, then their stockholders may ultimately be required to absorb the under-recovery. Under either event, there will be an unreasonable burden imposed as the result of discriminatory taxing practices.

That concludes my direct presentation. I will be happy to answer any questions.

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BILL SHEFFIELD
GOVERNOR



June 17, 1985

The Honorable Peter Rodino, Jr.
Chairman
House Committee on the Judiciary
B-353 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

I have enclosed the comments of the State of Alaska on Section 4 of H.R.2092 as reported by the House Public Works and Transportation Committee. The legislation deals with State and local taxation of interstate pipelines. The enclosed statement is for the use of the Committee and inclusion in the hearing record. Please let us know if you have any questions.

Thank you for your consideration of our views.

Sincerely,

John W. Katz
John W. Katz
Director of State/Federal
Relations and Special
Counsel to the Governor

Enclosure

cc: The Honorable Ted Stevens, U.S. Senate
The Honorable Frank Murkowski, U.S. Senate
The Honorable Don Young, U.S. House of Reps.

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The State of Alaska opposes Section 4 of H.R.2092, which adds a new tax-oriented section to the Natural Gas Pipeline Safety Act of 1968. That section prohibits states or local governments from assessing natural gas transmission property at a higher value or rate than that applicable to commercial and industrial property. We believe that this provision of the bill is an intrusion into traditional state taxing authority.

Although the proposal has no impact on the State at this time, it could conceivably conflict with Alaska's existing Oil and Gas Exploration, Production, and Pipeline Transportation Property Tax (Alaska Statute 43.56, enacted in 1973, attached). The tax covers certain types of oil and gas hardware and is levied on a statewide basis. If a local government wishes to levy a tax on the items covered by the State tax, it must do so at a rate no higher than the rate applicable to other property taxed by that entity. Other limitations on total tax collections by a local government also apply. We believe that these requirements are consistent with the spirit of Section 4.

However, it is possible that the statewide rate of 20 mills on the full and true value of the properties covered by AS 43.56 could conflict with local tax practices on other commercial or industrial property, as defined by the bill. In addition, AS 43.56 could conflict with section 4 of H.R.2092 because it is Alaska's only statewide property tax, and does not apply to all commercial and industrial property in the state.

We believe that AS 43.56 is a fair and reasonable State tax law, designed to prevent conflicting local taxation of properties of statewide importance. Because the hardware in question either crosses jurisdictional boundaries or possesses special significance, a state law was viewed as necessary by the Alaska legislature. At the same time, other types of commercial and industrial property were not viewed as significant enough to be subject to a statewide property tax. In addition, many of the properties in question are located in areas which are unorganized and not subject to the authority of any local government.

In conclusion, the State believes that Section 4 of H.R.2092 should be amended to exempt the existing Alaska oil and gas property tax statute from its purview. We would be please to work with Congressional staff to draft language accomplishing that result.

Leg. Justice committee report. — For report on ch. 107, SLA 1974 GSCH CSHB 360, see 1974 House Journal, p. 356.

Chapter 56. Oil and Gas Exploration, Production and Pipeline Transportation Property Taxes.

Section	Section
10. Levy of tax	130. Hearings of State Assessment Review Board
20. Exemptions	135. Certification
30. In place of other taxes	140. Supplementary assessment rules
40. State Assessment Review Board	150. Collection and deposit
50. For debts and expenses	160. Interest and penalty
60. Assessment	170. (Repealed)
70. Returns	180. Remedy
80. Investigation	190. Penalties
90. Assessment roll	200. Regulations
100. Assessment notice	210. Definitions
110. Appeal to the department	
120. Appeal to the State Assessment Review Board	

Sec. 43.56.010. Levy of tax. (a) An annual tax of 20 mills is levied each tax year beginning January 1, 1974, on the full and true value of taxable property taxable under this chapter.

(b) A municipality may levy and collect a tax under AS 29.53.045 at the rate of taxation that applies to other property taxed by the municipality. The tax shall be levied at a rate no higher than the rate applicable to other property taxable by the municipality. No municipality may exempt from taxation property authorized to be taxed under this chapter. Exemptions shall be limited to those in AS 29.53.020 and 29.53.025 and § 20 of this chapter.

(c) If the total value of assessed property of a municipality taxing under AS 29.53.045(c) exceeds the product of 225 per cent of the average per capita assessed full and true value of property in the state (to be determined by the department and reported to each municipality by January 15 of each year) multiplied by the number of residents of the taxing municipality, the department shall designate the portion of the tax base against which the local tax may be applied. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under ch. 56 of this title.

(d) A tax paid to a municipality under AS 29.53.045 on or before June 30 of the tax year shall be credited against the tax levied under (a) of this section for that tax year. If, however, a tax is not paid to a municipality until after June 30 of the taxable year, the department upon application shall refund to the taxpayer the amount of tax paid to the municipality under AS 29.53.045. The credit or refund of taxes paid to a municipality may not exceed the total amount of tax levied by the department upon the taxpayer for the tax year, under (a) of this section.

(§ 1 ch 1 FSSLA 1973, am § 7 ch 150 SLA 1975; am §§ 1, 2 ch 107 SLA 1974)

Effect of amendments. — The 1973 amendment added the second sentence to subsection (c).
The 1974 amendment substituted "the tax" for "A tax collected by a municipality as authorized by AS 29.53.045 shall be credited against the tax levied under (a) of this section and" at the beginning of the second sentence of subsection (c) and added subsection (d).
Editor's note. — Section 8, ch. 107, SLA 1974, contains a severability clause.
Legislative committee report. — For report on ch. 107, SLA 1974 GSCH CSHB 363, see 1974 House Journal, p. 356.

Sec. 43.56.020. Exemptions. (a) The following are exempt from local taxes levied or authorized under § 10(b) of this chapter:

- (1) property rights attached to or inherent in the right to explore for or produce oil or gas;
- (2) oil or gas leases or properties, whether producing or not;
- (3) oil or gas in place;
- (4) oil or gas produced or extracted in the state;
- (5) the value of intangible drilling expenses and exploration expenses;
- (6) an interest in property described in AS 43.55.010(b).

(7) (deleted)

(8) (deleted)

(b) There is exempt from state taxes levied or authorized under § 10(a) of this chapter, before the construction commencement date, property which is committed by contract or other agreement for use in this state primarily for the production or pipeline transportation of gas or unrefined oil, or in the operation or maintenance of facilities for the production or pipeline transportation of gas or unrefined oil.

(c) In (a) (2) of this section, "properties" means mineral interests in oil and gas and working interests, royalty interests, and overriding royalty interests in oil and gas leases. (§ 1 ch 1 FSSLA 1973, am § 28 ch 208 SLA 1975)

Effect of amendment. — The 1973 amendment deleted paragraphs (7) and (8) of subsection (a), added present subsection (b) of subsection (a), added present subsection (c).

Sec. 43.56.030. In place of other taxes. Except for those taxes imposed under ch. 55 and ch. 1 of this title, the taxes levied or authorized under § 10(b) of this chapter are in place of

(1) all other ad valorem taxes or other taxes imposed by a municipality on property subject to tax under this chapter or exempted from taxation by § 20 of this chapter, and

(2) all other taxes imposed by a municipality on or with respect to the property subject to tax under this chapter or exempted from taxation by § 20 of this chapter, including, but not limited to:

(A) taxes on the retail sale or use of the property except for the retail sales tax on the first \$1,000 of each sale;

(B) taxes on the sale or use of gas or unrefined oil;
(C) taxes on the sale or use of services used in or associated with the property or in its maintenance or operation except for the sales tax on the first \$1,000 of each sale;

(D) taxes on or measured by gross or net income from the property, including income from the exploration for, production of, or pipeline transportation of gas or unrefined oil or property; and

(E) any license, excise, fee, charge or other tax on or pertaining to the property or services. (§ 1 ch 1 FSSLA 1973, am § 55 ch 127 SLA 1974)

Effect of amendment. — The 1974 Legislative committee report. — For amendment deleted "operation, report on ch 127, SLA 1974 (SCSMB 817 am paragraph) providing "maintenance" in § 1, am 1974 House Journal, p. 587.

Sec. 43.56.040. State Assessment Review Board. The State Assessment Review Board is created within the Department of Revenue. The board consists of five persons appointed by the governor to serve at his pleasure, each of whom must be knowledgeable of assessment procedures. Each board member is subject to confirmation by a majority of the members of the legislature in joint session. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.050. Per diem and expenses. Members of the board shall receive per diem and expenses authorized by law for boards and commissions (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.060. Assessment. (a) The department shall assess property for the tax levied under § 10(b) of this chapter and AS 29.53.045 on property used or committed by contract or other agreement for use for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil at its full and true value as of January 1 of the assessment year.

(b) The department shall assess property for the taxes levied under § 10(a) of this chapter at its full and true value as of January 1 of the assessment year except that in the case of taxable property used or committed by contract or other agreement for the pipeline transportation of gas or unrefined oil or for the production of gas or unrefined oil to be transported by that pipeline, the first assessment date shall be the construction commencement date. If the construction commencement date is used as the assessment date, the tax payable shall be prorated on the basis of the assessment year remaining.

(c) The full and true value of taxable property used or committed by contract or other agreement for use in the exploration for gas or unrefined oil, or in the operation or maintenance of facilities for the exploration for gas or unrefined oil, is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(d) The full and true value of taxable property used or committed by contract or other agreement for the production of gas or unrefined oil or in the operation or maintenance of facilities for the production of gas or unrefined oil is:

(1) on the construction commencement date the actual cost incurred or accrued with respect to the property as of the date of assessment;

(2) determined on each January 1 thereafter on the basis of replacement cost less depreciation based on the economic life of proven reserves.

(e) The full and true value of taxable property used or committed by contract or other agreement for pipeline transportation of gas or unrefined oil or in the operation or maintenance of facilities for the pipeline transportation of gas or unrefined oil is:

(1) on the construction commencement date and until January 1 following the date the pipeline begins to transport gas or unrefined oil, the actual cost incurred or accrued with respect to the property as of the date of assessment;

(2) determined on each January 1 thereafter with due regard to the economic value of the property based on the estimated life of the proven reserves of gas or unrefined oil then technically, economically and legally deliverable into the transportation facility; however, if the proven reserves of gas or unrefined oil then technically, economically and legally deliverable indicate an economic life materially shorter than the estimated physical life of the transportation facility, the full and true value is the actual cost, reduced by an annual allowance for depreciation on a straight line basis over an economic life based on the actual elapsed life from the commencement of full operation to the date of assessment plus the estimated remaining life of the proven reserves of gas and unrefined oil then technically, economically and legally deliverable into the transportation facility as of the date of the assessment.

(3) on the assessment date next following inability to use or construct all or a substantial part of the facility for a period of 90 or more consecutive days because of natural disaster or legal prohibition, or other events beyond the control of a person having ownership or control of the property, adjusted to take into account any diminution in value.

(f) For purposes of this section, "actual cost" and "replacement cost" do not include interest capitalized before or during the period of construction nor the value of intangible drilling expenses. In the case of taxable property under construction, "actual cost" for purposes of this section means the costs incurred or accrued with respect to the property as of the date of assessment.

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(g) The department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.070. Returns. (a) The department may require by notice every person having ownership or control of an interest in property taxable under this chapter to submit a return in the form prescribed by the department, based on property values existing on January 1 of each year, except as otherwise provided in this chapter.

(b) The department by written notice may require a person to provide additional information within 30 days of the notice. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.080. Investigation. (a) The department may make an investigation of property on which a return has been filed or of taxable property upon which no return has been filed. In either case, the department may make its own valuation of the taxable property, which is prima facie evidence of full and true value.

(b) An employee or agent of the department may enter any premise necessary for the investigation during reasonable hours and may examine property and appropriate records. The owner of the taxable property upon request shall furnish to the employee or agent of the department reasonable assistance required for the investigation. If refused entry, the department may seek a court order to compel entry.

(c) For the purpose of the investigation the owner of the taxable property or his representative may be required to present him- or herself for examination under oath by the department. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.090. Assessment roll. The department shall prepare annually the assessment roll for taxation under this chapter. The roll shall contain:

- (1) a description of all taxable property;
- (2) the assessed value of all taxable property;
- (3) the names and addresses of persons owning property subject to assessment and taxation. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.100. Assessment notice. (a) On or before March 1 of each year, the department shall send to every owner of taxable property named in the assessment roll a notice of assessment, showing the assessed value of the property. Notice of assessment is effective on the date of mailing.

(b) The department shall send to a municipality a copy of the notice of assessment on any taxable property which is assessed under the provisions of this chapter and which is located in the municipality and on which a tax is authorized under § 40(b) of this chapter. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.110. Appeal to the department. (a) An owner of taxable property or a municipality receiving an assessment notice may object

to the assessment by advising the department in writing of the objections to the assessment within 20 days of the effective date of the notice.

(b) The department shall provide by regulation for notices of appeals to interested persons and municipalities.

(c) Following an objection the department may adjust the assessment and the assessment roll. An adjustment based on an objection from an owner of taxable property or a municipality shall be made within 30 days of the effective date of the notice of assessment. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.120. Appeal to the State Assessment Review Board. (a) After a ruling by the department on an appeal made under § 110 of this chapter, the owner or a municipality may further appeal to the board. The appeal must be filed in writing within 50 days of the effective date of the notice of assessment.

(b) The board shall provide by regulation for notices of appeals to interested persons and municipalities. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.130. Hearings of State Assessment Review Board. (a) The board shall hear appeals filed under § 120(a) of this chapter.

(b) A majority of the board constitutes a quorum required to transact business.

(c) The board shall provide by regulation for notices of hearings to interested persons and municipalities.

(d) If an appellant fails to appear at the hearing, the board may proceed with the hearing in his absence.

(e) The appellant bears the burden of proof at the hearing.

(f) The only grounds for adjustment of assessed value is proof of unequal, excessive or improper valuation or valuation not determined in accordance with the standards set out in this chapter, based on facts stated in a written appeal timely filed or proved at the hearing.

(g) The board shall certify its determinations to the department within seven days of the hearing.

(h) Repealed by § 5 ch 107 SLA 1976.

(i) An owner or municipality may appeal to the superior court for, and is entitled to, trial de novo of the board's action. (§ 1 ch 1 FSSLA 1973; am § 5 ch 107 SLA 1976)

Effect of amendment. — The 1976 amendment repealed subsection (h) which read: "The department shall enter the changes and certify the final assessment roll on or before June 1 of each year and by July 1 shall mail to the owner of taxable property or his authorized agent a statement of the amount of tax due." Legislative committee report. — For report on ch 107, SLA 1976 (SOS CENR 860), see 1976 House Journal, p. 660.

Sec. 43.56.135. Certification. No later than June 1 of each year, the department shall certify the final assessment roll and mail to the owner of the taxable property or his authorized agent a statement of the amount of tax due. (§ 1 ch 107 SLA 1976)

Legislative committee report. — For report on ch. 107, SLA 1976 (ACS CSM 8 683), see 1976 House Journal, p. 665.

Sec. 43.56.140. Supplementary assessment rolls. The department shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.150. Collection and deposit. (a) The tax levied by § 10(a) of this chapter is payable to the department on or before June 30 of the taxable year.

(b) The department may provide for voluntary prepayment and for payment by installments.

(c) The tax levied under § 10(a) of this chapter, interest and penalties collected with respect to this levy shall be deposited in the general fund. (§ 1 ch 1 FSSLA 1973; am § 3 ch 107 SLA 1976)

Effect of amendment. — The 1976 Legislative committee report. — For amendment substituted "June 30" for report on ch. 107, SLA 1976 (ACS CSM 8 683), see 1976 House Journal, p. 666.

Sec. 43.56.160. Interest and penalty. When the tax levied by § 10(a) of this chapter becomes delinquent, a penalty of 10 per cent shall be added. Interest on the delinquent taxes, exclusive of penalty, shall be assessed at a rate of eight per cent a year. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.170. Lien for tax.
Repealed by § 4 ch 94 SLA 1976.

Cross reference. — For present provisions covering the subject matter of the repealed section, see AS 43.10.030.

Sec. 43.56.180. Remedy. The remedy of distraint of property set out in AS 43.20.270 applies to the tax levied by § 10(a) of this chapter. However, only property subject to the tax may be distrained. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.190. Penalties. A person who knowingly fails to file a return when due or who makes a false statement in a return required under this chapter with intent to evade taxation is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, or by imprisonment for not more than six months, or by both, together with the costs of prosecution, notwithstanding the provisions of AS 12.80.030. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.200. Regulations. The board and the department may adopt regulations in accordance with the Administrative Procedure Act

(AS 44.62) as appropriate to carry out their respective duties under this chapter. (§ 1 ch 1 FSSLA 1973)

Sec. 43.56.210. Definitions. In this chapter

(1) "board" means State Assessment Review Board;

(2) "construction commencement date" means the earlier of April 1, 1974 or the date the following occur:

(A) there has been issued to the owner or his agent right-of-way permits, leases, and title and other rights in lands, and other approvals, permits, licenses and certificates, by federal, state and local agencies that a reasonable and prudent person would consider adequate to commence construction of the facilities in the expectation that all other approvals, permits, licenses and certificates necessary for the completion of facilities will be obtained;

(B) all approvals, permits, licenses and certificates are in full force and effect, unrevoked and without any modification, which might jeopardize the completion or continued construction of the facilities; and
(C) no order, judgment, decree, determination or award of a federal, state or local court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the facilities is in effect;

(3) "department" means the Department of Revenue;

(4) "gas" includes all natural gas and all hydrocarbons produced at the wellhead not defined as oil;

(5) "intangible drilling expenses" means those expenses defined in sec. 263(c) of the United States Internal Revenue Code as defined on the effective date of this paragraph;

(6) "taxable property" means real and tangible personal property used or committed by contract or other agreement for use within this state primarily in the exploration for, production of, or pipeline transportation of gas or unrefined oil (except for property used solely for the retail distribution or liquefaction of natural gas), or in the operation or maintenance of facilities used in the exploration for, production of, or pipeline transportation of gas or unrefined oil, including machinery, appliances, supplies, equipment, drilling rigs, wells (whether producing or not), gathering lines and transmission lines, pumping stations, compressor stations, power plants, topping plants, processing units, roads, tank farms, tanker terminals, docks and other port facilities, air strips and communication equipment and facilities, maintenance equipment and facilities, and maintenance camps and other related facilities; "taxable property" does not include permanent residences, office buildings requiring substantial local government services, or oil and gas pipeline systems owned and operated by a certificated public utility regulated by the Alaska Public Utilities Commission;

(7) "unrefined oil" includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead

in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas;

(b) "municipality" means a home rule or general law city or borough and includes but is not limited to a unified municipality organized under AS 29.64. (§ 1 ch 1 FSSLA 1973, am § 27 ch 206 SLA 1975, am § 8 ch 136 SLA 1977)

Editor's note. — The 1975 amendments added paragraph (b).
The 1977 amendments substituted "oil and gas pipeline systems owned and operated by certificated public utility" for "gas pipeline systems operated as utilities and" near the end of paragraph (b).

Editor's note. — Section 11, ch. 136, SLA 1977, provides: "This Act applies to production during the month of July, 1977 and succeeding months."

Chapter 57. Oil and Gas Regulation and Conservation Tax.

Section 10 Oil and gas regulation and conservation tax

Sec. 43.57.010. Oil and gas regulation and conservation tax. (a) There is levied upon the producer of oil a tax of one-eighth of one cent on each barrel of oil removed or sold from each lease or property in the state, less any part the ownership or right to which is exempt from taxation.

(b) The tax is in addition to and shall be administered and paid in the same manner as the taxes imposed by ch. 55 of this title. Producers of oil are required to make reports of production in the same manner and under the same penalties as required by ch. 55 of this title.

(c) Proceeds from the tax shall be paid into the general fund. (§ 1 ch 5 FSSLA 1973)

Chapter 58. Oil and Gas Reserves Ad Valorem Tax.

Section
10 Ad valorem tax
20 Exemptions
30 Credit against tax
40 Assessment
50 Assessment roll
60 Assessment notice
70 Appeal
80 Certification
90 Supplemental assessment rule
100 Investigation
110 Return and payment of tax

Section
120 Civil penalty
130 Interest
140 [Repealed]
150 Remedy
160 Regulations
170 Termination of tax
180 Accrual of early development security credit
190 Definitions
200 Payment to Alaska Native Fund

Editor's note. — Section 8, ch. 159, SLA 1975 provides: "Except as provided in this section, if a provision of this Act for any reason is invalid or unenforceable, the invalidity or unenforceability of that provision shall not affect the remainder of this Act or any of the other provisions of this Act. However, if AS 43.58.020(1), (2) or (4), or any of those paragraphs, should be for any reason held invalid or unenforceable, this Act shall be void as to entirety and of no effect whatsoever."

Section 9, ch. 159, SLA 1975, provides: "AS 43.58.020, 43.58.100, and AS 43.58.010 are included in this Act so as to be read double

thereof of the same intent in oil and gas and as an incentive for the early production of oil and gas discovered in the state. The legislature believes that the inclusion of these sections giving tax credits does not in any manner threaten the intent, validity or enforceability of the oil and gas ad valorem tax imposed by the Act. If the inclusion of these sections results in a judicial decision that the ad valorem tax imposed by AS 43.58.010 is invalid, these sections shall be read and of no effect whatsoever and the Act shall be read as if those sections had never been included."

Sec. 43.58.010. Ad valorem tax. (a) An annual tax is levied each tax year beginning January 1, 1976, on the full and true value of taxable property under this chapter.

(b) The rate of levy for the tax year beginning January 1, 1977 is 20 mills.

(c) [deleted]

(d) [deleted] (§ 1 ch 159 SLA 1975; am § 1 ch 172 SLA 1976)

Cross reference. — See editor's note to this chapter.

Effect of amendment. — The 1976 amendment added the second sentence of subsection (b) and deleted subsection (c)

and (d), which read "The legislature shall annually determine by law the rate of the levy for the succeeding year" and "The rate of levy may not exceed 20 mills," respectively.

Sec. 43.58.020. Exemptions. The following property that would otherwise be taxable property shall be exempt from taxation under this chapter:

(1) any property of the United States or the state;

(2) any property for the period of five years beginning on the date of the completion, suspension, or abandonment, whichever occurs first, of a discovery well in an oil or gas field or pool which in whole or in part underlies or comprises the lease or property;

(3) any property until any of the following occurs:

(A) the securing by the owner or operator of or by a person who has purchased or has the right to purchase all or any part of the production from a property, individually or with others, of permits, licenses, certificates or other approvals from federal and state agencies and rights-of-way, easements, leases or other rights in land which in the aggregate are reasonably necessary to commence construction of an initial transmission facility to transport oil or gas that may be produced from that property; or

STATE OF KANSAS



OFFICE OF THE GOVERNOR

State Capital
Topeka, Kansas

John Carlos Governor

May 24, 1965

The Honorable Dan Glickman
United States House of Representatives
2435 Rayburn House O.B.
Washington, D. C. 20515

Re: House Resolution
No. 2090

Dear Representative Glickman:

The House Committee on Energy and Commerce presently has before it House Resolution No. 2090 which would extend "4-R" tax discrimination protection to natural gas transmission properties. The State of Kansas is opposed to such a measure as it serves to make such properties preferred taxpayers, it shifts the burden of taxation onto the consumers and the producers of our natural resources, and it encroaches upon the State's ability to determine its own policy of taxation.

As you well know, the Kansas Legislature this last session enacted both a reappraisal bill and a classification resolution. Kansas is embarking upon a course which will change the ad valorem tax burden of its citizens in accordance with its own fiscal policy. House Resolution No. 2090 is an attempt by the Federal Government to influence and change that policy, a position which runs counter to the most basic notions of federalism.

Even more alarming is the relief which would be granted should this legislation be enacted. Under its terms, the level of assessment of natural gas transmission property would be equalized to the level of assessment of other commercial and industrial property. However, the definition of commercial and industrial property in no way resembles the definition of the same property in

NOT AVAILABLE

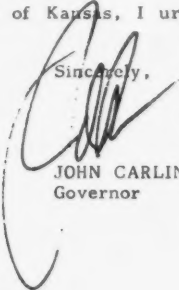
The Honorable Dan Glickman
 May 24, 1985
 Page Two

the 4-R Act, 49 USC §11503. As proposed, House Resolution No. 2090 would exclude from the definition of commercial and industrial property all minerals and public utility property, both of which are presently considered in determining the approximate level of assessment of rail transportation property. The end result of such an exclusion will mean that the pipeline companies will enjoy a reduction in their ad valorem taxes while producing oil and gas properties and public utilities, along with other property owners, will have their ad valorem taxes increased as a result of the resultant tax shift. In this era of energy shortages, it seems somewhat inconsistent for Congress to increase the tax burdens of those companies which are producing the very resources being carried by the pipeline companies. Moreover, since ad valorem taxes are allowable in the pipelines rate base, the proposed legislation would require that the taxpayers in the energy exporting state (Kansas) would shoulder the tax burden which is now being shared on a pro rata basis by the consumers of the natural gas.

The State of Kansas sincerely believes that its policy of taxation should remain unfettered by Congressional enactment. The administrative tribunals and courts of Kansas are open to any taxpayer who believes it has a tax protest or grievance. It is noteworthy that no cases have been commenced by the natural gas pipelines in this State in the last four years. The State is firmly convinced that equalization, if mandated by Congress, should be the same for all protected classes of taxpayers; to single out natural gas pipelines and award them a preferred comparison class affronts the very notion of equal protection under the law. Moreover, Congress would seem to lack a rational basis for providing a different comparison class for these properties. At the very least, this matter deserves a full hearing before the appropriate committees of Congress.

On behalf of the State of Kansas, I urge your opposition to House Resolution No. 2090.

Sincerely,


 JOHN CARLIN
 Governor

JC:cbb

TESTIMONY OF

JOANNE LIMBACH, TAX COMMISSIONER

STATE OF OHIO

ON

H.R. 2092, NATURAL GAS PIPELINE SAFETY ACT

TO THE

MONOPOLIES AND COMMERCIAL LAW SUBCOMMITTEE

OF THE

HOUSE COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C.
JUNE 12, 1985

THE OHIO DEPARTMENT OF TAXATION HAS REVIEWED H.R. 2092, SPECIFICALLY THE AMENDMENT INCLUDED DURING ACTION BY THE HOUSE PUBLIC WORKS COMMITTEE WHICH WOULD GIVE INTERSTATE NATURAL GAS PIPELINES ACCESS TO FEDERAL COURT WITH REGARD TO DISCRIMINATORY PROPERTY TAXES. IN EFFECT, THIS AMENDMENT WOULD RESTRICT STATE TAXATION OF INTERSTATE NATURAL GAS PIPELINE COMPANIES AND BAR THE SEPARATE CLASSIFICATION OF TANGIBLE PERSONAL PROPERTY OF NATURAL GAS PIPELINE COMPANIES ON THE STATE AND LOCAL LEVELS. WE OPPOSE THIS AMENDMENT AND URGE THE HOUSE JUDICIARY COMMITTEE NOT TO INCLUDE IT IN ITS VERSION OF THE BILL. WE OPPOSE THIS FOR A NUMBER OF REASONS DESCRIBED IN THIS TESTIMONY.

1. REVENUE LOSS TO SCHOOLS AND LOCAL GOVERNMENTS:

FIRST OF ALL, ADOPTION OF THE AMENDMENT WOULD CAUSE REVENUE LOSSES TO LOCAL SCHOOL DISTRICTS AND GOVERNMENTS IN OHIO. CURRENTLY, THE TANGIBLE PERSONAL PROPERTY OF NATURAL GAS PIPELINE COMPANIES IS ASSESSED AT 100% OF TRUE VALUE. UNDER THE PROPOSAL, OHIO WOULD BE REQUIRED TO ASSESS THESE COMPANIES AT 35% OF TRUE VALUE. THIS WOULD RESULT IN A \$10 MILLION LOSS IN PROPERTY TAX REVENUES, 70% OF WHICH WOULD BE LOSSES TO LOCAL SCHOOL DISTRICTS. THE LOSS IS PARTICULARLY OPPRESSIVE BECAUSE IT AFFECTS THE DAILY OPERATION OF LOCAL GOVERNMENTS AND UNDERMINES OUR COMMITMENT TO QUALITY EDUCATION IN OHIO. THESE PRIORITY INTERESTS SHOULD BE TAKEN INTO ACCOUNT AND BALANCED AGAINST THE PURPORTED INTERESTS OF FEDERAL INTERSTATE COMMERCE.

THE EFFECT OF REDUCING LOCAL GOVERNMENT REVENUES IS FURTHER HEIGHTENED BY THE CONTEXT IN WHICH IT OCCURS. THE FEDERAL GOVERNMENT HAS CUT FEDERAL AID TO LOCAL GOVERNMENTS, MAKING CLEAR THAT THE STATES AND LOCAL GOVERNMENTS MUST BEAR THE BURDEN OF PROVIDING MANY SERVICES WITHOUT FEDERAL HELP. IT IS ESPECIALLY INCONSISTENT AND UNFAIR FOR CONGRESS TO NARROW THE TAX BASE FOR LOCAL GOVERNMENTS AT THE VERY TIME IT IS DEMANDING A GREATER CONTRIBUTION FROM STATE AND LOCAL REVENUES TO FUND LOCAL SERVICES.

2. UNFAIR ADVANTAGE TO INTERSTATE GAS PIPELINE COMPANIES:

HISTORICALLY, THE INTERSTATE COMMERCE CLAUSE OF THE U.S. CONSTITUTION HAS PREVENTED DISCRIMINATION AGAINST INTERSTATE COMMERCE. OHIO DOES NOT DISCRIMINATE AGAINST INTERSTATE NATURAL GAS PIPELINE COMPANIES. ON THE CONTRARY, THE TANGIBLE PERSONAL PROPERTY OF THESE PIPELINE COMPANIES IS TAXED IN THE SAME MANNER AS THAT OF ALL OTHER PUBLIC UTILITIES IN OHIO. THE PROPOSED AMENDMENT GOES BEYOND THE PROVISIONS OF THE CONSTITUTION TO FORCE STATES TO TREAT INTERSTATE NATURAL GAS PIPELINE COMPANIES MORE FAVORABLY THAN INTRASTATE NATURAL GAS PIPELINE COMPANIES AND OTHER UTILITIES. THIS MEANS THAT THE AMENDMENT IS NOT NEUTRAL. IT WOULD PROVIDE THOSE COMPANIES WITH A GREATER BENEFIT THAN IS CONTEMPLATED WITHIN THE COMMERCE CLAUSE. FURTHER, THE AMENDMENT WOULD PRESSURE STATES TO CHANGE THEIR TAX POLICY. SUCH INTERFERENCE WITH THE FEDERAL SYSTEM IS NOT WARRANTED.

THE AMENDMENT ITSELF RAISES A FAIRNESS ISSUE. THE AMENDMENT WOULD RAISE THE QUESTION OF HOW STATES SHOULD TAX INTRASTATE PIPELINE COMPANIES. IF INTERSTATE NATURAL GAS PIPELINE COMPANIES ARE ASSESSED AT 35% OF TRUE VALUE AND INTRASTATE COMPANIES ARE TAXED AT A 100% LEVEL, SUCH TAX TREATMENT WOULD BE DISCRIMINATORY, BY PROVIDING SPECIAL BENEFITS TO NATURAL GAS PIPELINE COMPANIES THAT OPERATE ON AN INTERSTATE BASIS. ALONG THE SAME LINES, IT SHOULD BE POINTED OUT THAT IN OHIO, BOTH NATURAL GAS PIPELINE COMPANIES AND CRUDE OIL PIPELINE COMPANIES ARE TAXED AS UTILITIES. REFINED PRODUCTS PIPELINE COMPANIES ARE TAXED AS BUSINESSES. THE AMENDMENT IS CONFINED TO NATURAL GAS PIPELINE COMPANIES, WITHOUT MENTIONING THE OTHER TWO TYPES. THE STATES WOULD BE LEFT WITH THE DECISION OF HOW TO CORRECT THESE DISPARITIES. HOWEVER, THE ONLY REAL OPTION WOULD BE THE LOWERING OF ASSESSMENTS ON THESE INTRASTATE PIPELINES ALSO. THE RESULT WILL BE STILL GREATER LOSSES IN LOCAL GOVERNMENT RESOURCES.

3. STATES' RIGHTS VIOLATED:

THIS RAISES THE FURTHER QUESTION OF WHERE WILL IT ALL STOP? HISTORICALLY, THE FEDERAL GOVERNMENT HAS NOT ADVISED THE STATES HOW TO TAX INTERSTATE COMPANIES IN THE AREAS OF CORPORATE FRANCHISE TAXES AND PERSONAL INCOME TAXES. WOULD THESE BE THE NEXT AREAS THE FEDERAL GOVERNMENT WOULD EXAMINE? THE PROPOSAL WOULD PROVIDE SPECIAL BENEFITS TO NATURAL GAS PIPELINE COMPANIES THAT WOULD NOT BE SHARED WITH OTHER INTERSTATE INDUSTRIES. WOULD TELECOMMUNICATIONS BE THE NEXT INDUSTRY TO REQUEST SPECIAL TREATMENT? SUCH PRECEDENTS VIOLATE STATES' RIGHTS WITHIN THE FEDERAL SYSTEM.

4. MINIMAL SAVINGS TO CONSUMERS:

WHILE PROPONENTS HAVE TOUTED THE AMENDMENT AS PROVIDING SUBSTANTIAL SAVINGS TO CONSUMERS, IN REALITY, THIS WOULD NOT BE THE CASE. PROPERTY TAXES PAID BY THESE COMPANIES REPRESENT ONLY A SMALL PERCENTAGE OF THE EXPENSES WHICH BECOME PART OF THE RATE BASE USED TO CHARGE CONSUMERS. THEREFORE, ANY SAVINGS TO CONSUMERS WOULD BE NOMINAL.

IN SUMMARY, THE AMENDMENT SHOULD NOT BE INCLUDED IN THE HOUSE JUDICIARY COMMITTEE'S VERSION OF THE BILL FOR THE FOLLOWING REASONS:

1) IT CAUSES CONSIDERABLE REVENUE LOSS TO LOCAL GOVERNMENTS AND SCHOOL DISTRICTS.

2) UNDER THE GUISE OF PROTECTING INTERSTATE COMMERCE, THE AMENDMENT IMPOSES NEW RESTRICTIONS IN AREAS OF TAXATION TRADITIONALLY RESERVED TO THE STATES.

3) ASSESSING INTERSTATE NATURAL GAS COMPANIES AT A LESSER RATE THAN OTHER PIPELINE COMPANIES WOULD FORCE OHIO TO DISCRIMINATE AGAINST CRUDE OIL PIPELINE COMPANIES AND OTHER COMPANIES THAT OPERATE ON AN INTRASTATE BASIS. THE STATES WOULD BEAR THE BURDEN OF CORRECTING THE SITUATION.

4) CONSUMER SAVINGS WOULD BE MINIMAL.

STATEMENT OF THE
AMERICAN GAS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
ON THE REAUTHORIZATION OF THE
NATURAL GAS PIPELINE SAFETY ACT OF 1968, AS AMENDED
JUNE 12, 1985

The American Gas Association (A.G.A.) is a national trade association composed of nearly 300 natural gas distribution, interstate, and intrastate transmission companies in all 50 States. Collectively, A.G.A. member companies account for about 85 percent of the nation's total annual gas utility sales.

A.G.A. is pleased to present its views on legislation to reauthorize the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as amended. As the members of this Subcommittee know, the present law authorizes the operation of the safety program for the transportation of natural gas. It also administers the grant-in-aid program for States that assist the Materials Transportation Bureau (MTB) in the enforcement of the NGPSA. A.G.A.'s position on NGPSA reauthorization is clear: reauthorization of the present law would permit

continued enforcement of the NGPSA, which has in the past provided maximum public safety at a reasonable cost to the public.

A.G.A.'s views focus on the following points:

- 1) The overall effectiveness of the pipeline safety program at the Department of Transportation (DOT).
- 2) How well the State-Federal effort actually works in practice.
- 3) The possible merger of the grants-in-aid programs authorized by the NGPSA and the Hazardous Liquid Pipeline Safety Act.
- 4) The concept of "user fees".
- 5) State Tax Treatment of Interstate Pipelines.

A.G.A. respectfully submits that the natural gas pipeline safety program as implemented today effectively serves the original Congressional intent of providing the safest gas pipeline service that is possible within the limits of economic realities.

The Natural Gas Pipeline Safety Program:

Adequate and Effective

Under the present regulations, natural gas pipelines are subject to the design, construction, operation, and maintenance safety standards prescribed in Title 49 of the

Code of Federal Regulations, Part 192. These regulations are enforced by the MTB under the authority of the NGPSA (49 U.S.C. Section 1671 et. seq.). Part 192 applies adequate safety standards for operation and maintenance of the one million-mile natural gas pipeline system currently in place.

The fact that pipelines meticulously conform to the safety requirements of Part 192 is confirmed by A.G.A. data that indicate that the incidence of lost workdays and fatalities of pipeline employees is very low. Furthermore, according to the National Safety Council (NSC), for 1983, accidents which caused days away from work or fatalities in the pipeline transportation industry were 0.92 per 100 full-time employees. This accident rate is lower than for any other transportation industry and compares favorably, for example, with local and suburban transit (7.96 per 100 employees) and trucking (5.78 per 100 employees). The pipeline transportation accident rate is also lower than the total industry average for all other industries reported by the NSC. Those other industries are mining (1.47 per 100 employees); construction (3.88 per 100 employees) manufacturing (1.67 per 100 employees); wholesale and retail trade (1.75 per 100 employees) and services (2.86 per 100 employees).

These figures are evidence of the safety of natural gas transmission and distribution operations. The safety efforts of pipeline operators become even clearer when one considers that 61 percent of all gas pipeline incidents were

caused by outside force damage, not by pipeline operations.

The National Transportation Safety Board (NTSB), in its annual analysis of transportation facilities for 1983, found that fatalities involving gas pipeline transportation represented only a miniscule percentage of those involved in virtually any other category of transportation. While one fatality is too many, the 10 pipeline accident fatalities are much lower than fatalities suffered annually in the areas of aviation (1,155), marine activities (1,322), railroads (547), and highways (42,500). We believe that the NTSB analysis leads to the inexorable conclusion that pipeline transportation is the safest mode of transportation available.

A.G.A. believes that the excellent safety record of pipeline transportation proves that pipelines are dedicated to providing safe service to the public. Furthermore, this safety record offers prima facie evidence that the current level of regulation of pipeline operations effectively ensures this safe service. Greater regulation would simply burden the industry, with no increase in safety, but with a concomitant increase in the costs to the consumer. The authorization under discussion here should allow MTB and the states to continue to provide the enforcement authority that has traditionally been effective in providing safe operations.

A.G.A. also believes that adequate testing and inspection requirements are already in place. There are 12

different sections of 49 CFR Part 192 which, including subsection requirements, total 19 specific regulations requiring testing and inspection of pipelines and pipeline facilities at varying, though limited, time intervals. The maximum time interval for all but one of these inspection requirements is at least once each year, but with intervals not exceeding 15 months. Many companies inspect their facilities more frequently. The one exception to the above time requirements is that for "Leakage surveys of the distribution system outside the principal business area (which) must be made as frequently as necessary, but at intervals not exceeding five years" (49 CFR Part 192.723(b)(2)). A.G.A. believes the present inspection requirements are adequate and effective, as the industry's safety record shows. A similar view is supported by the Administrator of the Research and Special Programs Administration (RSPA). In a March 12, 1985 letter to Rep. Phil Sharp, the Administrator remarked on the "good safety record" of the pipeline industry.

A.G.A. supports the Federal-State partnership idea for enhancing safety in the natural gas transportation system. The experience of our members is that the safety program would be workable without the voluntary support and assistance of the State governments. It is important to the success of subsequent safety legislation that the States continue to take a major role in the pipeline safety program, and the Federal Government should: 1) create the

proper incentives to keep the States involved in the program; and 2) encourage the States that are not involved to get involved. Only in this way can the gas industry as a whole work under a uniform set of regulations, while allowing States to maintain autonomy in this area.

Merging of Liquid and Gas Pipeline Programs

A.G.A. does not believe that a merger of the regulatory programs for the liquid and gas pipelines would be in the best interests of pipeline safety.

The safety aspects of the two types of pipelines are not the same. For example, in case of leakage, liquid "puddles" out and can be a hazard after the leak is repaired, whereas gas dissipates and ceases to be a problem once repaired. Consequently, the safety precautions that must be followed are different for gas pipelines than for liquid pipelines. Also, environmental considerations that exist with liquid pipelines -- and "clean up" costs to be borne -- do not exist with gas pipelines. Finally, in at least one state, different agencies have jurisdiction over gas and liquid pipelines. If the two safety programs are combined, duplicative and/or conflicting agency efforts may arise.

A.G.A. believes that the MTE should maintain the two regulatory systems apart, rather than lumping them into one regulatory scheme, particularly where no additional funding

would be available to assist in the program safety costs of liquid pipelines.

User Fees to Finance Pipeline Safety

A.G.A. generally opposes the concept of "user fees".

However, it is hard to fully comment when a formal proposal has not been put forth by DOT. We look forward to working with this Subcommittee and DOT when a definite proposal surfaces. On the issue of user fees as a general proposition, the following points should be kept in mind:

- o Since pipeline safety benefits all of society, the brunt of the cost should be spread out over all of those who benefit -- who are, in effect, the "users". It should be noted at this point that pipeline operators already expend large sums of money and manpower in efforts to comply with Federal safety regulations. To impose a disproportionate financial burden on the industry to bear more of the cost would be unfair to the industry and the consumers that it serves.

- o A user fee charged to the pipeline is actually a tax on the gas consumer, because the consumer will end up paying the fee through higher prices for gas. This higher cost would be especially burdensome on many consumers of natural gas.

- o Increased gas costs due to inclusion of "user fees" would work toward putting the natural gas industry at a

competitive disadvantage with other forms of energy. This would not be good for the industry -- nor would it be good for the fixed customer of a pipeline that cannot switch to other forms of energy, but who would have to bear the increased fixed costs of a pipeline when dual fuel capable customers switch to oil or coal.

State Tax Treatment of Interstate Pipelines

The A.G.A. is committed to ensuring that all possible steps are taken to minimize costs to consumers. One of these steps would be to end state discrimination in the assessment of property tax rates on interstate pipelines. Some States impose a higher property tax rate on public utility property, including interstate pipelines, than is assessed on other types of commercial and industrial property. This is particularly inequitable in the case of interstate pipelines, because the tax burden is imposed on residents of other States through higher gas costs, yet these customers receive none of the benefits of those taxes. Furthermore, the pipeline company rarely has a choice of States in which to locate the lines and is unable to move the pipe once it has been situated. We strongly support the enactment of legislation which will provide the same protection to interstate pipelines as has been afforded to virtually all other forms of interstate transportation:

railroads, motor carriers, and airlines.*

A 1983 A.G.A. Energy Analysis points out that the tax burden on the natural gas distribution and transmission industry is "significantly higher than the average for all industries This is particularly evident for state and local taxes [which] . . . represented an average of 63% of net income for gas transmission companies [in 1979] -- compared to 40% for all industries" Under Federal Energy Regulatory Commission (FERC) regulations, state and local taxes imposed on pipelines are flowed directly through to natural gas consumers as a component of the cost of service. By the same token, any decrease due to lower taxes is also reflected in a lower cost of service to the consumer.

Since the enactment of the Natural Gas Policy Act of 1978 (NGPA; Pub. L. No. 95-621), the U.S. gas supply outlook has improved dramatically. Gas prices are projected to be stable through the end of the decade. However, gas markets have become increasingly competitive, and future demand for natural gas will depend on economic factors and on the ability of gas to maintain its competitive position

* Antidiscrimination provisions are contained in the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. No. 94-210, railroads); Motor Carrier Act of 1980 (Pub. L. No. 96-296, motor carriers of property); Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. No. 97-248, airlines); and Bus Regulatory Reform Act of 1982 (Pub. L. No. 97-261, all motor carriers).

vis a vis alternate fuels. Gas-to-gas competition has also become a significant factor in many markets. Discriminatory state tax practices adversely affect the ability of the gas industry to remain competitive.

To the extent that enactment of Federal legislation to end and prevent these discriminatory state tax practices results in lower taxes paid by interstate pipelines, these savings will be passed through to consumers through a lower cost of service. This in turn may help in regaining lost industrial load and thus reduce the proportionate share of fixed costs borne by each ratepayer.

We do not advocate doing away with state and local taxes, of course. We merely seek equity on two levels: (1) the same Federal statutory protection afforded to other interstate modes of transportation; and (2) the same tax treatment afforded to other commercial and industrial properties within a particular jurisdiction.

Conclusion

For the reasons stated above, A.G.A. respectfully submits that since there is an absence of evidence to the contrary, the present pipeline safety programs have worked very well and the reauthorization of the NGPSA should not include restructuring of the pipeline safety program.

LAW OFFICES OF
BISHOP, LIEBERMAN, COOK, PURCELL & REYNOLDS

1200 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20036

(202) 857-9800

TELEX 440574 INTLAW LI

IN NEW YORK

B. SHARF, LIEBERMAN & COOK

105 AVENUE OF THE AMERICANS

NEW YORK, NEW YORK 10036

(212) 704-0100

TELEX 227707

WRITER'S DIRECTOR

REC'D: 857-9889

June 18, 1985

The Honorable Peter W. Rodino, Jr.
 Chairman, Committee on the Judiciary
 House of Representatives
 2137-A Rayburn House Office Bldg.
 Washington, DC 20515

Dear Mr. Chairman:

At the hearing before the Subcommittee on Monopolies and Commercial Law on Wednesday, June 12, on H.R. 2092 questions were raised to which answers are provided. In the interest of clarification, we are including herewith some responsive material which we believe will be helpful to the Committee.

The subject of the hearing, injunctive relief from discriminatory ad valorem property taxes imposed on interstate natural gas pipeline companies, raised questions concerning (1) the pursuit of remedies in state courts, (2) whether interstate gas pipeline companies were subject to any different taxing system than intrastate public utilities such as electric companies and telephone companies. Finally, whether the impact of higher discriminatory taxes could be shown to be passed on to consumers in states beyond the borders of the "high tax" states.

We have prepared three statements which may be helpful to the Committee in comprehending the existence of discrimination in property taxation of interstate natural gas

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P. W. Rodino, Jr.
June 18, 1985
Page two

pipeline companies. This may help provide guidelines by
affording access to federal district court to enjoin dis-
criminatory assessments.

We will be pleased to continue to work with members of
the Committee, counsel for the Committee, and your staff.

Best regards.

Sincerely,


Marlow W. Cook

MWC:clp

ATTACHMENT A

Interstate Natural Gas Pipelines
Have Been Repeatedly Denied Relief
From Discriminatory State Taxation

State courts have repeatedly denied relief to interstate gas pipelines from discriminatory taxation.

- E.g., Panhandle Eastern Pipeline Co. v. Dwyer, 485 P.2d 149 (Kansas Sup. Ct. 1971); Michigan Wisconsin Pipeline Co. v. Iowa State Tax Board, No. 84-1240, (Iowa Sup. Ct., May 22, 1985); Navajo County v. Four Corners Pipeline Co., 479 P.2d 174 (Arizona Sup. Ct. 1970); Writ Denied to Arkansas-Louisiana Gas Co., et al., in McCloud Telephone Co. v. State Board of Equalization, No. 58,810 (Oklahoma Sup. Ct., December 16, 1982); Mississippi River Transmission Corporation v. Simonton, 442 So.2d 764 (Louisiana Court of Appeals, 1983).

Typically, the state courts have imposed a nearly impossible burden of proof on the protesting pipeline.

- The Kansas Supreme Court, for example, has long required proof of fraud: "Unless there has been fraud, corruption or conduct so oppressive, arbitrary or capricious as to amount to fraud in the [tax] assessment, the courts cannot interfere." Panhandle Eastern Pipeline Co. v. Dwyer, 485 P.2d 149 (1971).

Even where the state courts have granted relief, it has proved to be illusory.

- For example, in Northwest Pipeline Corporation [a member of the Williams Companies] et al. v. San Juan County, No. 18782 (Utah Sup. Ct., March 13, 1984), the court held that it was unconstitutional for the state legislature to reduce the tax rate on locally assessed property and not do the same for state assessed property.
- But the court refused to allow retroactive relief for those property owners not parties to the appeal, because of the revenue impact on the counties.

- 2 -

- o The court also in effect denied retroactive relief for those property owners who were parties to the appeal. It did so by establishing a standard for obtaining relief, which was so burdensome (the pipeline would have to establish the value of all locally assessed property), that the cost of meeting this standard outweighed any gains from reduced taxes.

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Classification of Interstate Carriers
Compared With Intrastate Utilities

H.R. 2092 would not affect intrastate utilities.

- o Congress has provided a remedy to interstate carriers on an industry-by-industry basis upon presentation of evidence establishing a need for the remedy. As noted, it did so in 1976 for the railroads, in 1980 for the trucking industry and in 1982 for the airlines.
- o Congress has not waited until all interstate carriers present evidence before providing a remedy, because to do so would only delay relief and therefore harm those industries that have already established a need for relief.
- o Classification of intrastate utilities. In the states which assess property on a unit (ad valorem) basis, all utilities are usually assessed by a state commission. The company files an annual report of its total company value to the state commission which then makes its own assessment. This assessment, in turn, is allocated to the several counties of the state and taxed at the local rate. A rare exception to this practice is in place in Louisiana. In that state county assessors value unregulated intrastate pipeline property on the basis of replacement cost new, less depreciation.
- o Moreover, intrastate utilities are in a different classification vis-a-vis the Commerce Clause of the Constitution. The customers of the local electric, gas and telephone companies are citizens and voters in the same state that taxes the property of these utilities. In addition, virtually all of the revenues of these utilities are regulated by the state public service commission. Thus, it is a local matter if the state imposes an excessive property tax, not an interstate matter.
- o In contrast, interstate gas pipelines are wholly regulated by the Federal Energy Regulatory Commission (FERC). In addition, the users of the natural gas are typically several states away from the state imposing the discriminatory tax. Thus, the problem is clearly interstate in nature, requiring a federal remedy to remove the burden on interstate commerce as in the case of railroads, trucks and airlines.

The Impact of Discriminatory State Property Taxes
"Exported" From High Tax States to Consumer States

- o As a result of the enclosed study of the consumption of natural gas in California, New Jersey and Florida, it is demonstrable that discriminatory taxes imposed in other states are borne by consumers in those states. In California, such taxes of three major interstate natural gas pipeline companies amount to \$5,497,288 as shown by the analysis attached hereto. The study also demonstrates that discriminatory taxes imposed in other states are borne by the consumers in New Jersey in the amount of \$2,488,890. In Florida, the comparable burden on Florida consumers amounts to \$541,850. The three state total is \$8,528,000.
- o The calculation of these "exported" taxes is based upon a ratio of the total revenues of the major pipelines in the study compared to the percentage of revenues generated in the three states in the study.

ACCT COPY 10-11-1971

California - 1983

El Paso -

States with Discriminatory Taxes

State	1983 Taxes	Class.	
Arizona	\$10,200,000	(38% - 25%)	34% = \$3,468,000
Kansas	69,219	(30% - 12%)	60% = 41,531
Louisiana	566	(25% - 15%)	40% = 226
New Mexico	2,798,069	(100% - 67.5%)	32.5% = 909,372
Oklahoma	2,509,458	(26% - 12%)	53.8% = <u>1,350,088</u>
Total Discriminatory Taxes			<u>\$5,769,217</u>

MCF
 $\frac{705,916,105}{874,188,151} =$ California
 80.75% System

\$ 5,769,217
 $\times 80.75\%$
\$ 4,658,643

Revenues
 $\frac{2,783,920,327}{3,575,026,897} =$
 77.87%

\$ 5,769,217
 $\times 77.87\%$
\$ 4,492,489

Total Discriminatory Taxes Flowing to Consumers in California

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California - 1983

Transwestern Gas -

States with Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>
Arizona	\$1,758,204	(38% - 25%) = 34% = \$ 597,789
New Mexico	653,018	(100% - 67.5%) = 32.5% = 212,231
Oklahoma	275,378	(26% - 12%) = 53.8% = <u>148,153</u>
Total Discriminatory Taxes		<u>\$ 958,173</u>

<u>MCF</u>		<u>Revenues</u>
<u>238,939,057</u> =	California	<u>1,026,703,699</u> =
277,626,070	System	1,132,955,447
85.06%		90.62%
\$ 958,173		\$ 958,173
x 86.06%		x 90.62%
<u>\$ 824,604</u>		<u>\$ 868,296</u>

Total Discriminatory Taxes Flowing to Consumers in California

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California - 1983

Southwest Gas -

State with Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>	
Arizona	\$ 3,623,461	(38% - 25%)	34% = <u>\$1,231,977</u>
Total Discriminatory Taxes			

MCF		Revenues
<u>5,278,000</u> =	California	<u>42,097,000</u>
64,014,000	System	379,936,000
8.25%		11.08%
 \$1,231,977		 \$1,231,977
x 8.25%		x 11.08%
<u>\$ 101,638</u>		<u>\$ 136,503</u>

Total Discriminatory Taxes Flowing to Consumers in California

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New Jersey - 1983

Transco -

States With Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>	
Alabama	\$ 717,491	(30% - 20%)	33.3% = \$ 238,925
Louisiana	5,378,446	(25% - 15%)	40% = 2,151,378
Mississippi	1,607,949	(30% - 15%)	50% = <u>803,975</u>
Total Discriminatory Taxes			<u>\$3,194,278</u>

MCF		Revenues	
198,792,878 =	New Jersey	853,026,097 =	
821,631,679	System	3,517,817,145	
24.19%		24.25%	
\$ 3,194,278		\$ 3,194,278	
x 24.19%		x 24.25%	
<u>\$ 772,696</u>		<u>\$ 774,612</u>	

Discriminatory Taxes Flowing to Consumers in New Jersey

AVAILABLE

New Jersey - 1983

Texas Eastern -

States With Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>	
Alabama	\$ 170,310	(30% - 20%)	33.3% = \$ 56,713
Arkansas	959,828	(20% - 12%)	40% = 383,931
Louisiana	2,842,843	(25% - 15%)	40% = 1,137,137
Mississippi	1,900,000	(30% - 15%)	50% = 950,000
Ohio	3,431,300 x 80%	(100% - 35%)	52% = 1,784,276
Tennessee	444,000	(55% - 40%)	27.3% = 121,212
Total Discriminatory Taxes			<u>\$4,433,269</u>

MCF
320,471,579 = New Jersey
 886,425,677 System
 36.15%

\$ 4,433,269
 x 36.15%
\$ 1,602,627

Revenues
1,085,378,256 =
 2,954,262,102
 36.74%

\$ 4,433,269
 x 36.74%
\$ 1,628,783

Discriminatory Taxes Flowing to Consumers in New Jersey

New Jersey - 1983

Tenneco -

States with Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>	
Alabama	\$ 140,480	(30% - 20%)	33.3% = \$ 46,179
Arkansas	107,871	(20% - 12%)	40% = 43,148
Louisiana	3,648,470	(25% - 15%)	40% = 1,459,388
Mississippi	2,212,785	(30% - 15%)	50% = 1,106,393
Ohio	1,839,159 x 80%	(100% - 35%)	52% = 956,363
Tennessee	749,732	(55% - 40%)	27.3% = 204,677
Total Discriminatory Taxes			<u>\$3,816,748</u>

MCF
16,014,320 = New Jersey
 862,110,976 System
 1.86%

\$ 3,816,748
 x 1.86%
\$ 70,992

Revenues
77,841,498 =
 3,482,556,409
 2.24%

\$ 3,816,748
 x 2.24%
\$ 85,495

Discriminatory Taxes Flowing to Consumers in New Jersey

COPY AVAILABLE

Florida - 1983

Florida Gas -

States with Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>		
Alabama	\$ 103,780	(30% - 20%)	33.3% =	\$ 34,559
Louisiana	702,338	(25% - 15%)	40% =	280,935
Mississippi	260,700	(30% - 15%)	50% =	<u>130,350</u>
Total Discriminatory Taxes				<u>\$ 445,844</u>

All Florida Sales

Total Discriminatory Taxes Flowing to Consumers in Florida

\$445,844

Florida - 1983

United Gas -

States with Discriminatory Taxes

<u>State</u>	<u>1983 Taxes</u>	<u>Class.</u>	
Alabama	\$ 95,951	(30% - 20%)	33.3% = \$ 31,952
Louisiana	5,581,699	(25% - 15%)	40% = 2,232,680
Mississippi	1,324,767	(30% - 15%)	50% = <u>662,384</u>
Total Discriminatory Taxes			<u>\$2,927,016</u>

<u>MCF</u>		<u>Revenues</u>	
<u>18,819,910</u>	= Florida	<u>\$ 84,583,902</u>	=
586,475,000	System	2,577,955,000	
3.21%		3.28%	
 \$ 2,927,016		 \$ 2,927,016	
x 3.21%		x 3.28%	
<u>\$ 93,957</u>		<u>\$ 96,006</u>	

Total Discriminatory Taxes Flowing to Consumers in Florida

Tenneco Inc

Tenneco Building
P.O. Box 2311
Houston, Texas 77001
(713) 787-2121

June 17, 1985

The Honorable Peter W. Rodino, Jr., Chairman
Committee on The Judiciary
Subcommittee on Monopolies & Commercial Law
U. S. House of Representatives
2141 Rayburn Building
Washington, D.C. 20510

Dear Mr. Chairman:

At the June 12, 1985 hearing to consider Mr. Edgar's proposed amendment to H.R. 2092, the Subcommittee requested information showing the effect this proposed legislation would have on the average consumer. I would like to respond for the record at this time.

This is a very difficult question to answer since no single variable in fuel pricing can be isolated for analysis in calculating the consumer cost impact. All aspects of fuel usage and pricing are interrelated, and thus the hypothetical adjustment of one factor necessarily affects other factors and requires parallel adjustment for an accurate analysis.

For example, if the total volume of gas transported and sold through a pipeline was reduced because the price was not competitive with an alternate fuel, the fixed cost of the pipeline would be borne by the smaller volume resulting in a price increase to the consumer.

However, the benefit of a reduction in pipeline property taxes will certainly flow through to the consumer as a reduction of one component of the cost of service when a subsequent rate application is filed by a company.

In attempting to submit an answer to the question raised, we have obtained data reflecting the total volumes (MCF) of gas sold by all interstate natural gas pipeline companies which are regulated by the FERC. The estimated tax reduction of \$98.5 million presented at the hearings, divided by the 1983 sales of 14.3 billion MCF L¹ produces a reduction of approximately \$.007 (7/10 cent) per MCF sold.

I trust this material is responsive to your request and should you require additional data, please let me know. We appreciated very much the opportunity to appear before your committee.

Sincerely,
TENNECO INC.

R. M. Bailey
Tax Manager

RMB/sah/18336

L¹ Statistics of Interstate Natural Gas Pipeline Companies
1983, DOE/EIA-0145(83)

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PROPERTY TAX JOURNAL

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**International Association
of Assessing Officers**

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Assessment Law Notes: Recent Court Cases Involving Utility Valuation/Equalization — Ramifications and Trends

James F. Gossett

James F. Gossett is director of publications and association counsel for the International Association of Assessing Officers.

Ed. Note—The following is a presentation made by the author at the 1983 conference of the Midwestern States Utility Appraisers held September 14-16 in Springfield, Illinois.

Thank you. It is a great pleasure to represent the International Association of Assessing Officers here today, and I want to thank Nina Slack for inviting me. I have brought with me some materials describing IAAO—as we call the association—and some of its services. These I think I will distribute later on. I have also brought a table of cases with citations and headnotes, and the table has already been distributed to you. These are the cases I'm going to be discussing today, so the table may help you follow what I'm saying, and you'll also have the citations so you can look up the case decisions yourselves later on.

The formal title of my presentation is "Recent Court Cases Involving Utility Valuation/Equalization — Ramifications and Trends." Actually, Nina gave me a little more input on the assigned topic in her letter of invitation. Besides discussing ramifications and trends, she also asked me to comment on whether recent cases were fairly decided, and specifically, she put the question to me, "Are money and might winning over right?"

Now, I don't know about the money part of Nina's question. After reading a good many cases on utility valuation and equalization, I can't seem to find anyone who has any money.

The utilities don't have it, if you listen to their representatives. Railroads, airlines, and other utilities are going bankrupt. Either they are regulated and taxed so heavily by federal, state, and local governments that they can't make a fair profit, or, if they've been deregulated, then

the cut-throat competition in their business is killing them.

On the other hand, the governments that regulate and tax utilities certainly don't have any money. The federal deficit is a sky-high \$200 billion plus, as you know, and only a few states have budget surpluses of more than 5 percent anymore, which is considered to be the prudent minimum. State and local governments are scrambling for every tax dollar they can get.

Maybe it's the scrambling, in fact, that makes valuation and equalization cases involving utilities so interesting — and so profitable from the point of view of attorneys. All of the parties fight especially hard for the money that they desperately need, and a lot of it winds up in their lawyers' pockets. So, maybe my colleagues are the ones who have the money. (I assure you that I don't.)

As for the "might" that Nina spoke about, I suppose that at the federal level, the utilities have it. Some of them, like Amtrak, have obtained exemptions from state and local property taxes by using their might in Congress. Others — railroads, motor carriers, airlines, bus lines — have achieved the enactment of federal legislation that protects them from discrimination in the state and local tax area.

At the state level, on the other hand, utilities seem to have very little "clout" — as we say in Chicago. The 4-R Act, the Motor Carrier Act — this legislation was passed for a reason. Historically, the state and local governments have tried to sock it to utilities tax-wise because utilities are not politically popular. An examination of case decisions reveals that the state and local government officials involved in utility tax cases often admit that they have been treating utilities badly, but insist that they have the obligation to do so under state law, and the legal *right* to do so under federal law. And this is still true, to some extent, despite the passage of the 4-R Act and other federal legislation designed to protect utilities from discriminatory assessment and taxation by states.

Of course, utilities do have certain obligations to the public that ordinary commercial and industrial enterprises don't have, because they make use of resources that are "public" resources to many people's way of thinking, they provide services that are regarded as particularly essential to the populace, and, in many instances, they have a government granted and maintained monopoly. Absent specific congressional legislation to the contrary, like the 4-R Act, state and local governments, to some extent, do have the legal *right* to treat utilities differently from other citizens for tax purposes — a right that should often stand up under equal protection analysis, as required by the federal constitution, because such discrimination is, in many cases, quite reasonable.

In individual cases, however, what is legally *right* or even morally *right*, if you will, can get caught up in the clashes of money and might, as Nina suggests, and we can lose track of it. Sometimes, there can even be a

conflict between what is legally right and what is morally right, and that is one of the most difficult situations for courts — and lawyers generally — to deal with. I think that courts, for the most part, have tried to do what is right in deciding utility tax cases. Where legal and moral right have diverged from each other, I think the courts, as in most other types of cases I know of, have bent the law or fashioned new laws — becoming law makers instead of just law interpreters — in order to do what they thought was morally right. But in analyzing these recent utility tax cases, we, of course, can disagree with the courts' assessment as to where the right may lie.

Now, I've chosen 12 recent utilities cases to discuss in detail here, and we'll look at the decisions and their ramifications, and then perhaps identify trends in utility valuation and equalization exemplified or illustrated by these cases. These cases were all decided in the past year, and there were many other utilities cases decided in the same time period that I could have chosen for discussion. But these, I think, are the most interesting ones.

Looking at the cases, first I would note that many of the cases I have chosen concern the railroad industry, and the majority of these involve alleged discriminatory assessment and/or taxation prohibited by the Railroad Revitalization and Regulatory Reform Act of 1976. As you know, I'm sure, the 4-R Act prohibits the states from assessing railroad property at a higher ratio to fair market value than other commercial and industrial property, and from applying a higher tax rate against railroad property than is applied to commercial and industrial properties generally. The act further gives the railroads the right to pursue their remedy in the federal district courts, if they choose.

One interesting case arising under the 4-R Act was decided February 3, 1983, by the U.S. Court of Appeals for the Fourth Circuit. That was *Clinchfield Railroad Company v. Lynch*,¹ which involved assessments in North Carolina and, among other things, raised the issue of whether a federal district court may correct a perceived discrimination against railroad real property and, in so doing, order a reduction in assessments that necessarily must embrace personal property as well.

In the *Clinchfield* case, the U.S. District Court for the Eastern District of North Carolina granted relief to certain railroads in their 4-R Act suit alleging discriminatory assessment. On appeal, the fact of discriminatory real estate assessment was not questioned, but only the propriety of the remedy devised by the district court, which was to order that plaintiff railroads' assessments be lowered from about 100 percent of value to approximately 72 percent of value, the level at which real property of other commercial and industrial taxpayers was generally assessed within the jurisdiction.

¹*Clinchfield Railroad Co. v. Lynch*, 700 F.2d 126 (4th Cir. 1983).

The trouble was that in North Carolina, assessments against railroad property were made against the total operating property owned by the railroad without distinction between real and personal property. The state contended that there was no discrimination against railroad personal property in North Carolina because the personal property of all taxpayers, public utilities and non-utilities alike, was reappraised annually at close to full market value. Consequently, argued the state, the railroads enjoyed an undue windfall under the district court's order, which lowered assessments for personalty as well as real estate.

On appeal, the Fourth Circuit court found that deciding the case required a consideration of where the burden of proof fell in 4-R Act suits once discrimination, even though shown only as to real estate, had been established. The court examined the 4-R Act and found that Section 306(2)(d) references applicable state law as determining where burdens of proof lie with respect to assessed value and true market value. Then, the court found that under North Carolina law, the Property Tax Commission is obligated to order a reduction in the assessment of a railroad's property once the railroad establishes an "inequitable difference" between its assessment and that of taxpayers whose property is assessed locally by county authorities. From this determination, the court concluded that North Carolina law would require the assessing and taxing authorities to assume *any further burden remaining* in 4-R Act cases once discrimination is established, even if only as to real property.

Turning to the specifics of the case at bar, the Fourth Circuit court then was able to satisfy itself that once North Carolina was shown to have practiced discrimination with regard to real property under its statute that applied a single, undifferentiated assessment to both real and personal property, the state assumed the burden of establishing facts sufficient both to warrant a different conclusion with respect to personal property and to enable the district court to fashion a decree that would not frustrate efforts to alleviate the discrimination already proven as to real property. The court of appeals noted that North Carolina had introduced into evidence certain statistics tending to show that ratios of assessment for personal property generally in the state were at or near 100 percent, but the court of appeals found that North Carolina had failed to carry the second half of its burden of proof.

Said the court:

Even if we assume that the record sufficed to permit a finding that all personal property, whoever the owner, was assessed at 100 percent of market value and that railroad personalty has not been treated in a discriminatory fashion, nevertheless there was literally no evidence in the record to show a breakdown by percentage for the railroads . . . of the respective worths of their real and personal property holdings. Without that crucial evidence, the district court was incapable of

determining that proportion representing real property to which the 72-percent figure should be applied and that proportion to which a higher ratio developed for personal property should be applied. The district court, as a consequence, was bound to alleviate the conclusively proven real property discrimination just as it did; the state failed to adduce evidence which would have allowed a meaningful alternative remedy to be fashioned.

So ends what I consider to be an important court of appeals ruling in *Clinchfield Railroad Company v. Lynch*.

What are the ramification of this ruling? I would say that if the court of appeals decision is not overturned on appeal, and if other circuit courts follow the decision, the unit approach to the valuation of railroad property, which the courts themselves have frequently held to be the best method for valuation of many railroads, will be endangered. States will be pressured to determine assessments specifically applying to railroad personal property, and to obtain assessment-ratio studies for railroad personal property, and personal property generally. This may be a difficult task — some would say an impossible task — but it is one that states are probably better equipped to perform than the railroads. And, of course, states have another, easier way of solving the problems posed for them by the Fourth Circuit, which is to keep real property assessments up to date so that discrimination against railroad real property cannot be demonstrated. The *Clinchfield* ruling was based on the fact that there was no issue as to real property discrimination. Where this type of discrimination can't be proven, assessors needn't worry about the impact of *Clinchfield*.

I guess the way I look at *Clinchfield* is that it may have been fairly decided in terms of equity, or moral right, to refer back to our earlier discussion, although in terms of the law, I think the court's analysis leaves a lot to be desired. I really think there was no legal justification for placing any burden of proof on the state in *Clinchfield*. After meeting their burden of proof as to real property discrimination, the railroads still had a separate burden of proof as to personal property, it seems to me, whether one looks at state or federal procedural law. And I'm willing to admit that even from the point of view of equity in assessments, the court of appeals decision can be faulted because it will probably result in railroad personal property being assessed at a lower percentage of value than other commercial and industrial personal property.

There was a second issue in the *Clinchfield* case that also deserves some attention, and that is the question of whether a median approach or a weighted average approach should have been used in calculating the extent of assessment discrimination against railroads in North Carolina under the 4-R Act. The trial court reasoned that a median approach was proper, but on appeal, the state argued for use of a weighted average measure that would take into consideration the aggregation of centrally

assessed public service company properties with locally assessed properties in the determination of an assessment ratio for commercial and industrial property, to be used for the purposes of 4-R Act comparisons, reflecting the fact that other centrally assessed companies typically owned vast amounts of property and were assessed in the same way as railroads, which had the effect of lessening the appearance of discrimination against railroads.

The *Clinchfield* court, unfortunately for the state, concluded that Congress intended railroads to be treated comparably to all other commercial and industrial taxpayers — and not merely to all other centrally assessed public service company taxpayers, which the court found would tend to be the result if a weighted average were used for purposes of 4-R Act comparisons; discriminatory treatment of other large taxpayers would skew an arithmetical average. Bearing in mind the remedial purposes of the act, and Congress' preference for a method that would (quoting from the legislative history) "make possible the fairest comparison — that of the carrier with the hypothetical average taxpayer" — the court of appeals held that the district court chose the right method of averaging.

Now, the implications of the Fourth Circuit court's ruling on this issue are significant because whether a median or a weighted average method is used in making 4-R Act comparisons can have a significant impact on the assessment ratio or tax rate that is ultimately prescribed for railroad property by the courts. And we should seriously consider whether the second part of the *Clinchfield* opinion is a fair resolution of the median-weighted average controversy, which arose again in other recently decided cases, as you may have noted in reading the table I provided to you.

References to the legislative history of the 4-R Act in resolving this issue are pretty dangerous. As the Fourth Circuit court noted, there are some indications in the history that might lead one to believe that when the act was made law, at least some members of Congress did have in mind a weighted average as the best method for measuring discrimination against railroads. But there is often a problem in measuring the legislative "intent" behind the enactment of any law. For example, just because the committee reporting a bill says that the purpose of a certain provision is such-and-such does not necessarily mean that the majority of lawmakers voting on the final draft of that bill will have the same intention as to the interpretation of that provision. Although it is questionable, from the point of view of legislative history, whether the *Clinchfield* court's ruling is correct, most knowledgeable statisticians are at least mildly in favor of the median as a measuring device for discrimination under the 4-R Act, and considering the basic logic of the Fourth Circuit's "hypothetical average taxpayer" theory, I would say that the Fourth Circuit court's resolution of the issue was correct, even

though I'm aware that there are good arguments in favor of using a weighted average in some cases.

Another 4-R Act case decision of significance that was handed down recently was *Trailer Train Company v. State Board of Equalization*,² a case from California that was decided by the Ninth Circuit Court of Appeals January 25, 1983. The court of appeals decision has also been taken to the Supreme Court of the United States on petition for certiorari, and we should know by next month as to whether the Supreme Court has decided to take the case.

There were several interesting issues decided by the court of appeals in the *Trailer Train* case from California. The suit in that case was brought by a private railroad car company, which alleged that the California Board of Equalization violated the 4-R Act by discriminatory property tax treatment of the taxpayers' rail property, and sought a preliminary injunction to prevent the board from collecting additional taxes on that property. Issues raised included the question of whether the 4-R Act applied to efforts to amend property tax bills when the assessments upon which the taxes were based were made before the effective date of the act, but after its enactment, and the question of whether the act permits courts to enjoin application of discriminatory tax rates to railroad property when there is no indication that discriminatory assessments have been imposed.

In California's *Trailer Train* case, the Ninth Circuit court of appeals examined the congressional purpose in postponing the effective date of the act for three years. The court determined that Congress intended to afford the states sufficient time to comply with the statute's prohibition against discriminatory tax treatment of railroad property, and not to provide states with an additional opportunity to impose and collect discriminatory taxes. Therefore, the court concluded that allowing California's additional tax in the case at bar to relate back to the date of the assessment, and thus escape the application of the act, would subvert Congress' purpose in postponing the effective date of the act, as well as run counter to the basic policy of the act to prohibit discriminatory taxation of railroad property. In what I perceive to be a reasonable and equitable determination, the ramifications of which are obvious enough, the court held that the act applied to the tax-rate adjustments in the case at bar.

The court then examined the act to determine whether an injunction could be granted in the case, and found that under a narrow, literal reading of Section 11503 of the act, it would appear that even though tax-rate discrimination constitutes a violation of the act, injunctive relief should only be granted if tax-rate discrimination is accompanied by an

²*Trailer Train Company v. State Board of Equalization*, 697 F.2d 860 (9th Cir. 1983).

assessment-ratio discrimination of at least 5 percent. However, the court also found that a statute should not be interpreted so narrowly as to defeat its obvious intent, and that the obvious intent of the act was "to eliminate the long-standing burden on interstate commerce resulting from discriminatory state and local taxation of common and contract carrier transportation property" (quoting here from what the court deemed to be the act's legislative history). The court found that congressional debate indicated that Congress recognized that discrimination could result from either assessment variation or tax-rate variation, and that, given the basic concerns motivating Congress' enactment of the 4-R Act, Congress could not have intended that the statute be construed as authorizing district courts to enjoin tax-rate discrimination only when it is accompanied by assessment-ratio discrimination. Therefore, the court of appeals held that injunctive relief was available in the case at bar.

Now, the implications of this part of the Ninth Circuit court's decision are obvious, but, to me, this reasoning of the court of appeals in the *Trailer Train* case, from a legal standpoint, is as fuzzy as the reasoning of the court in *Clinchfield* in the section of its opinion discussing burdens of proof. It would seem to me that if Congress knew, when 4-R was enacted, that discrimination could result from either assessment variation or tax-rate variation, as the court says, then, if Congress intended to allow injunctive relief from either type of discrimination, Congress would have specifically provided for such relief in the act. Then, the court of appeals in *Trailer Train* would not have had to ignore the clear language of the statute in order to reach the result it wanted to reach. But here, legal niceties were not about to stop this court from dealing with the issues raised by the case in what it regarded as the most equitable or morally right way. And I suppose if you don't mind courts acting as lawmaking, rather than just law-interpreting bodies — which I do — and if you agree with the notion that railroads should be protected from discriminatory taxation, then you probably have no objection to this part of the *Trailer Train* decision.

There is a third issue raised by the *Trailer Train* case, and that involves which tax rate applicable to commercial property should be used in measuring tax-rate discrimination under the act if more than one tax rate is used in a jurisdiction. California used different rates for property on the "secured roll," which was primarily real property, and property on the "unsecured roll," which was primarily personal property, and the district court, concluding, apparently, that no rate generally applicable to commercial and industrial property could be calculated for California, interpreted the 4-R Act as requiring use of the average tax rate for all property in the making of tax-rate comparisons under the act where no generally applicable commercial and industrial rate was available.

On appeal, the Ninth Circuit court held that the district court should

have focused on the issue of whether the secured roll or the unsecured roll contained the majority of the state's commercial and industrial property. The tax rate for that roll should have been used instead of the average rate for all property, according to the Ninth Circuit court, in making a determination of whether tax-rate discrimination existed in California under the 4-R Act. Thus, the Ninth Circuit court established what appears to be a conflict of opinions with the Fourth Circuit court, which, in deciding the *Clinchfield* case, accepted an averaging approach. Or, at least, the State of California is arguing that a conflict between the circuits exists and is trying to obtain Supreme Court review of the Ninth Circuit's decision on those grounds. Actually, the conflict is not as clear in this case as it is in a later case decided by the Ninth Circuit court, the *A.C.F.* case, which we will discuss in a minute, since *Clinchfield* dealt with assessment-ratio discrimination and the California *Trailer Train* case dealt with tax-rate inequality.

I would like to point out, while we are discussing *Trailer Train*, however, the strange reasoning that led the court of appeals to its conclusion that either the rate for the secured roll or the rate for the unsecured roll should have been used by the lower court, for the purposes of 4-R Act comparisons, rather than some average rate. In *Trailer Train*, the court first says that the rate applicable to the majority of commercial and industrial property has the advantage of being an actual rate in existence, as opposed to a manufactured rate not specifically applicable to any property in the state. The use of an actual rate, said the court, allows for easier calculation and minimizes the degree of disruption to the state's tax structure that would result if adjustments were necessary to avoid discriminatory taxation. In addition, the court said, use of the rate applicable to the majority of the commercial and industrial property satisfies the basic purpose of the act, since as long as the majority of commercial and industrial property is taxed at the same rate as rail transportation property, the owners of such commercial and industrial property can be expected to provide a strong check against any state discrimination.

In the first place, I don't understand why use of an actual rate allows for an easier calculation, and, even if it did, I'm not sure that this consideration should be relevant to a choice of methods for measuring discrimination under the 4-R Act, especially when calculating an average tax rate is not all that difficult. As for minimizing disruption to the state's tax structure, any step one might take to water down the 4-R Act would tend to minimize disruption, so I hardly think that can be a consideration in 4-R Act analysis unless the choice is between two approaches that will be equally effective in terms of reducing discrimination against railroads, which was not shown to be the case in *Trailer Train*.

Finally, the 4-R Act does not authorize discrimination against railroad property as compared with *some* commercial property, as long as it is not

the *majority* of commercial property. And the owners of a majority of commercial property may be as impotent as the railroads themselves to prevent discrimination against railroads when the owners of the *majority* of commercial property are a *minority* of the voters.

Which brings us to another Ninth Circuit 4-R Act case decision just handed down last month in *A.C.F. Industries, Incorporated v. Arizona*.¹ In that case — arising out of Arizona, obviously — the plaintiffs, who were owners and lessors of railroad cars to operating carriers, appealed a district court decision throwing out their 4-R Act suit, and raised several interesting arguments, including (1) exempt business inventories should be included in "commercial" property when the assessment ratio for commercial and industrial property is determined for purposes of measuring assessment discrimination under the 4-R Act, (2) leased residential property must be considered "commercial and industrial" property for purposes of 4-R Act analysis, and (3) use of the "median" formula rather than a weighted mean formula is preferable under the act (almost the same question dealt with by the Fourth Circuit court in *Clinchfield*).

In the *A.C.F.* case, the Ninth Circuit court found that the first claim raised by the plaintiffs, concerning exempt business inventories, had "nothing to commend it but a careful lawyer's desire to leave no possible theory unexplored," and I am rather inclined to agree with the court, since the express language of the statute limits the term "commercial and industrial property" to "property other than transportation property and land used for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy." Under this language, exempt property clearly could not be deemed "commercial and industrial property" for purposes of the act, since it cannot be said that such property is "subject to a property tax." The ramifications of the court's decision on this issue may include courts ordering fewer and smaller assessment reductions than we would otherwise see under the 4-R Act.

With respect to the second issue raised by the plaintiffs, relating to the inclusion of leased residential property in the category of "commercial and industrial property," the Ninth Circuit court again ruled for the state, this time on the grounds that "nothing in the statute prohibits Arizona from treating property devoted to residential use differently from property devoted to commercial and industrial use." I think the court's reasoning on this question misses the real crux of the issue, which is whether leased residential property is really commercial enough from the point of view of the lessors as to be includable in the term "commercial and industrial property" for purposes of 4-R Act analysis. However, absent specific guidance to the contrary in the statutory

¹A.C.F. Industries, Incorporated v. Arizona, No. 82-5641 (9th Cir., August 26, 1983).

language or in the legislative history. I think that the court's ruling squares, at least, with the commonly accepted notion of what we mean when we speak of "commercial" property. If this part of the court's decision becomes accepted law, plaintiffs will be unable to use the 4-R Act to redress discrimination against rail property in the assessment and taxation of apartments and other leased residential property, but a distinction between such property and railroads for tax purposes is probably not unreasonable.

The court's handling of the case's third issue — the median v. weighted mean question — began with the observation that the *Clinchfield* ruling was relied upon by the plaintiffs, but the court found that neither the Fourth Circuit court nor the district court in *Clinchfield* indicated that the "median" approach was the only one that could be used in 4-R Act analysis. Then, the court cited a passage in a committee report appendix that was attached unchanged to successive versions of the bill that became the 4-R Act. This passage specifically refers to a "weighted average" in explaining the type of assessment-ratio study that can be used in demonstrating assessment discrimination under the act. In addition, the court found that the median approach would ignore legitimate classifications fundamental to Arizona's tax system.

Of course, as I have previously indicated, reliance on the legislative history of the 4-R Act for guidance as to how it should be implemented is a risky business. And I have already expressed my preference for median averaging in comparisons under the 4-R Act, based on the logic of the hypothetical average taxpayer approach, which would deny that a state has any interest since the passage of the 4-R Act in grouping railroads with a less preferred class of large commercial and industrial taxpayers. The ramifications of the third portion of the *A.C.F.* decision, wrong-headed as I believe it to be, could be determined by the response to the petition for certiorari that was filed with the U.S. Supreme Court in the California *Trailer Train* case.

In another 4-R Act case out of Arizona, meanwhile, the U.S. District Court for the District of Arizona, the same district court that decided *A.C.F.* initially, was faced again with some of the same issues raised in *A.C.F.*, and also with some other questions relating to interpretation of the act. This was *Atchison, Topeka & Santa Fe Railway Company v. Arizona*,⁴ decided March 18, 1983.

In the *Atchison* case, one of the railroad plaintiffs argued that centrally assessed property should be excluded from consideration as "commercial and industrial property" for the purposes of 4-R Act analysis, but the district court — rightly, I think — concluded that this contention was meritless, finding that if such an exclusion had been intended, Congress

⁴*Atchison, Topeka & Santa Fe Railway Company v. Arizona*, 559 F. Supp. 1237 (D. Ariz. 1983).

would have expressly stated that exclusion within the definition of commercial and industrial property in the act. And, for the reasons stated earlier in connection with the ruling by the court of appeals in *A.C.F.*, the district court also rejected a contention by the plaintiff railroads that exempt manufacturers' inventories should be considered as "commercial and industrial property" in 4-R Act comparisons.

On the other hand, the district court in *Atchison* tackled the question of whether personal agricultural property should be considered "commercial and industrial property" under the act, and concluded — rightly again, I think — that such property should be considered as "commercial and industrial" under the 4-R Act, since the act's specific exclusion of "land devoted to agricultural use or timber growing" implied that all other agricultural property was to be included in the term "commercial and industrial property" under the act. As the court noted, to create a general exclusion for agricultural property under the act would render the specific exclusion for agricultural land a mere surplusage.

The court in *Atchison* also ruled that leased residential property should be included in "commercial and industrial property" for the purposes of 4-R Act comparison, which, of course, has no significance now because the Ninth Circuit court of appeals ruled just the opposite way. On the other hand, the other segments of the district court's decision, concerning centrally assessed property, manufacturers' inventories, and especially personal agricultural property, may have ramifications in the future whenever courts, assessing officials, and others have to make a decision about what constitutes "commercial and industrial property" under the 4-R Act.

Moving right along, the Eighth Circuit Court of Appeals also decided a 4-R Act case involving Trailer Train Company recently. That was *Trailer Train Company v. State Board of Equalization of the State of North Dakota*,² decided June 29.

In the North Dakota *Trailer Train* case, the railroad car company and another related firm contended that the state's practice of taxing the personal property of the plaintiffs, while exempting the personal property of other commercial and industrial taxpayers, resulted in tax discrimination against railroad transportation property in violation of the 4-R Act. Ruling in favor of the plaintiff companies, the court first concluded that the act prohibits states from imposing any tax which "results in discriminatory treatment of a common carrier by railroad." The court then determined that because of the close relationship between the plaintiff companies and common carriers by railroad, tax discrimination against the plaintiffs resulted in discriminatory treatment

²*Trailer Train Company v. State Board of Equalization of the State of North Dakota*, 710 F.2d 468 (8th Cir. 1983).

of the common carriers who used railroad cars provided by the plaintiffs.

The *Trailer Train* court had previously held, in another case, that the state's practice of taxing the personal property of common carriers, while exempting the personal property of other commercial and industrial taxpayers, violated the 4-R Act. So, the court found no difficulty extending protection to the personalty of the plaintiff companies in the *Trailer Train* case, once it had decided that the railroad car companies were entitled to the protection of the 4-R Act. The ramifications of the decision are apt to be rather significant, though, since it has the potential for greatly expanding the kinds of plaintiffs who can take advantage of the 4-R Act. And I'm not at all sure that the case was rightly decided in terms of congressional intent either. Too much emphasis is placed on the word "results" and not enough emphasis on the phrase "results in discriminatory treatment of a common carrier by railroad," which indicates to me that the prime victims of 4-R Act discrimination and the only proper complainants would have to be common carrier railroads.

Besides 4-R Act cases, several other interesting cases involving assessments and taxes on railroad property were decided in the past year. Among these cases was *Illinois Central Gulf Railroad Company v. Department of Local Government Affairs*,¹ decided by the Supreme Court of Illinois on April 8.

In the *Illinois Central* case, the railroad company appealed from a decision of the state Department of Local Government Affairs that nine parcels of vacant real estate owned by the railroad were subject to local assessment and taxation. On appeal to the supreme court, the department contended that the vacant land could be assessed and taxed by local government because the parcels were not railroad operating property, and the railroad tried to refute this argument by showing that the property was necessary for future expansion, which would have made the land "operating property" under applicable state law.

Before the supreme court, one of the issues argued was whether the railroad could introduce evidence that it was attempting to procure business for its facilities on property contiguous to the subject land. The defendants argued that this evidence was irrelevant and immaterial. However, the supreme court ruled — rightly, I think — that even though evidence of this sort was less persuasive as to the railroad's intent and ability to use the vacant land than direct evidence would have been, it was nonetheless relevant and admissible evidence on the question of whether the vacant parcels were railroad operating property.

¹*Illinois Central Gulf Railroad Company v. Department of Local Government Affairs*, 447 N.E.2d 315 (Ill. 1983).

Unfortunately for the railroad, other evidence in the case outweighed the evidence presented by the railroad, in the supreme court's mind. Therefore, the court ruled that the parcels could be assessed and taxed. Nevertheless, the case may have its ramifications in the future when the extent of railroad operating property is an issue.

Then there was the decision of the Court of Appeals of North Carolina handed down October 19, 1982, in the case called *In re Appeals of Southern Railway Company*.⁷ This case raised several interesting questions about the use of the income approach in assessing railroad property, including (1) whether the North Carolina Property Tax Commission erred in adding deferred income taxes to taxpayer railroads' income prior to capitalization in valuation of the railroads' property for tax purposes, (2) whether the income to be capitalized was basically the railroads' income for the preceding year or an average of the past five years' income, (3) whether indebtedness of the taxpayer railroads needed to be restated on the basis of current market interest rates or whether the embedded cost of debt was appropriate, and (4) whether railroads could be valued by using the actual return on equity capital rather than the current market cost for capitalization.

On appeal, the court of appeals held that where current income was charged to establish a reserve for deferred income taxes, and simply anticipated taxes that might never become due, deferred income taxes should be added to income before capitalization in determining property values by the income approach. The court also held that where the railroad companies' income had increased each year, there was no need to average income over five years for purposes of determining the railroads' base income to be capitalized. The court held that the railroads' income did not require adjustment to reflect current market interest rates on indebtedness, the embedded cost of debt being an appropriate measure of the railroads' indebtedness. And finally, the court of appeals ruled that the railroads could be valued by using the actual return on their equity capital rather than the average rate of return for all railroads used in Standard and Poor's Index, as proposed by the railroads.

From a legal viewpoint, I have no objection to any of the *Southern Railway* court's rulings, although the appraiser experts among you may want to take issue with some of the court's conclusions. If the state supreme court and other courts follow the lead of the court of appeals, I think the *Southern Railway* decision will have some very positive ramifications, at least in North Carolina.

Proceeding to the next case, and dealing with it briefly, another railroad decision recently handed down was the decision of the Supreme

⁷*In re Appeals of Southern Railway Company*, 296 S.E.2d 463 (N.C. App. 1982).

Court of Oregon in *Southern Pacific Transportation Company v. Department of Revenue*.² That case was decided May 24, 1983.

In the Oregon *Southern Pacific* case, the state Department of Revenue appealed from decrees of the Oregon Tax Court which held that the valuation unit used by the department in assessing Southern Pacific property under the unit approach did not include the St. Louis & Southwestern Railroad, a midwestern railroad affiliated with and almost wholly owned by Southern Pacific. The Oregon Supreme Court reversed the tax court and held that the properties of the subsidiary railroad were "property" of the parent railroad that could be included in the valuation unit within the constraints of fairness, where the parent railroad owned 99.7 percent of the subsidiary, and exerted executive control over the subsidiary's marketing, financing, management, operations, and labor. This decision is a proper interpretation and application of the unit approach as I understand it, and it may be widely cited in the future when the courts have to deal with that approach.

There were also two utility cases decided outside the United States within the past year which I found rather interesting. One was *Kennet District Council v. British Telecommunications*,³ decided January 27, 1983 by the British House of Lords, and the other was *Peterborough Utilities Commission v. The Corporation of the City of Peterborough*,⁴ decided by the County Court of Peterborough in Ontario December 23, 1982.

The *Kennet* case concerned rateable occupation, the British notion that property can't be taxed unless it is being used by someone in his business, and that the person taxed should be the one using the property. In *Kennet*, distress warrants were issued for rates (or taxes) supposedly due for certain telephone exchanges, and the alleged user of the property, British Telecommunications, contended that it was not in rateable occupation of the property during the relevant time period because the telephone exchange buildings had just been completed at that time, telephone equipment was just being installed, and the exchanges had not begun operation.

On appeal, the House of Lords, which is Britain's highest court, held that lower court justices were entitled to conclude that the telephone exchange buildings were for the housing of telephone equipment, and it followed that British Telecommunications was enjoying the accommodation at the moment that some equipment had been moved in. Therefore, the House of Lords held that the telephone company was in rateable condition during the relevant time period and owed the rates

²*Southern Pacific Transportation Company v. Department of Revenue*, 664 P.2d 401 (Or. 1983).

³*Kennet District Council v. British Telecommunications*, RA 43 (1983).

⁴*Peterborough Utilities Commission v. The Corporation of the City of Peterborough*, #5326/81 (County Court of the County of Peterborough, December 23, 1982).

assessed. Personally, I would think that telephone exchange buildings are not for the storage of equipment, but for the housing of operating telephone exchanges. Therefore, I question the correctness of the Lords' decision in this case. But I guess the decision is law in England until such time as Parliament may pass a law reversing the decision.

Almost as strange as the *Kenet* case for an American to contemplate is the *Peterborough* case, which involved an unusual statute that subjected certain public property to taxation only if it was being used for the purposes of a public utility. In *Peterborough*, instead of a taxpayer contending that his property was being used by a public utility and therefore deserving of some special property tax consideration, the taxing authority was contending that the property was used for public utility purposes and the taxpayer, which in this case was the Peterborough Utilities Commission, was arguing the opposite.

The property in *Peterborough* consisted of lands held by the City of Peterborough for future use by the commission, some of the property being vacant and some of it being occupied by, of all things, a zoo. The county court determined that the vacant land was not being used for the purposes of a public utility because the property was not being "used," and as for the zoo, the court determined that, while it might be useful and a "public convenience" in the sense that it was more convenient for the citizens of Peterborough to see wild animals in the zoo than in, say, Africa, a zoo just wasn't what the term "public utility" conjured up in the minds of most people. All of the subject property was therefore held to be exempt from taxation.

Now, I suppose I agree with the Peterborough court's decision on the vacant land question, but the statute governing the case was broadly worded enough that a zoo might almost be included in the class of public utilities covered by the statute, it seems to me. On the other hand, the idea of a zoo as a public utility does seem rather ludicrous, conjuring up for me the vision of gazelle and zebra leaping over gas and oil pipelines, telephone cables, and such, so perhaps that wasn't what the draftsmen of the statute had in mind.

Finally, I would like to mention briefly two Illinois Appellate Court cases decisions in two cases that bear the same name, *People ex rel. Bosworth v. Lowen*. Both of these cases dealt with a statute that provided for the assessment of pollution control facilities at 33-1/3 percent of the fair cash value of their economic productivity to their owners.

In a case decided June 14, 1983,¹ Bosworth, who was a county treasurer, and the Valley View Community Unit School District argued that the statute in question violated the assessment uniformity requirement of the state constitution because the statute generally did not allow assessment and taxation of pollution control devices in the

¹People ex rel. Bosworth v. Lowen, 451 N.E.2d 269 (Ill. App. 1983).

hands of public utilities. They argued that pollution control devices were just as financially profitable to investors as any other type of facility owned by a public utility because the value of the pollution control facility was included in the rate base. But this kind of profit was not considered economic productivity under the statute in question, which specifically provided that earnings should be attributed to a pollution control facility only to the extent that the operation thereof resulted in the production of a commercially saleable by-product or increased the production, or reduced the production costs, of the products or services otherwise sold by the owner of that facility.

On appeal of summary judgments entered by the trial court, upholding the constitutionality of the statute, the appellate court held that the statute provided for all pollution control facilities to be treated in a uniform manner for tax purposes, regardless of the rate-making and price-setting practices of the industry, and hence, that the statute did not violate the uniformity requirements of the state constitution. Rejected also was the contention by the county treasurer and the school district that the statute created an impermissible exemption from property taxation, since the court found that the statute did not provide for a fixed-dollar reduction in valuation, but merely set forth a method or procedure of valuation.

Finally, there was a *Bosworth* case decided June 15, 1983,² in which the county treasurer and the school district argued that pollution control facilities owned by Citizen Utilities Company of Illinois were fully taxable under the statute because, unlike other pollution control facilities, the company's sewage treatment plants actually produced services which were sold to Citizens' customers, Citizens being in the business of providing sanitary sewer service to certain residents of DuPage Township. In that proceeding, the treasurer and school district also argued that the land under the sewage treatment facilities in the case at bar was not a part of a pollution control facility for purposes of the statute, and therefore should be taxed at fair cash value.

On appeal from a summary judgment for the treasurer and school district, the appellate court found that Citizens Utilities Company was in the business of disposing of sewage, and its pollution control facilities, far from increasing the production or reducing the cost of its services, actually increased the cost of the disposal service otherwise sold by Citizens. For that reason, the appellate court held that the Citizens facilities were covered by the statute. Noting also that a pollution control facility, including underlying land, could be distinguished from a pollution control device, not including the land — and that the statute's specific exemption of land underlying cooling ponds from the term "pollution control facility" implied no exemption from the provisions of the statute

²People ex rel. Bosworth v. Lowen, 451 N.E.2d 275 (Ill. App. 1983).

for other land — the appellate court then held that land under a sewage treatment plant could properly be considered a part of a pollution control facility for tax purposes.

Since both *Bosworth* decisions were appellate court decisions, I suppose they could be reversed by the Illinois Supreme Court at any time, and the repercussions of the decisions would then be limited. To me, it seems that both cases were rightly decided, however, so maybe the decisions will hold up on appeal.

Finally, now, I have come to the section of my talk where I want to identify a few trends exemplified or illustrated by these cases, and maybe even add a few predictions as to whether the trends will continue.

First, I think the fact that most of the utility cases I have seen lately are railroad assessment cases indicates a trend that has been going on at least since the enactment of the 4-R Act, in which railroad cases have more and more come to dominate the utility assessment segments of our court dockets. I expect this trend to reverse itself somewhat in the coming years with the enactment of legislation similar to the 4-R Act, protecting truckers, airlines, and other interstate businesses, but there will continue to be a great many railroad assessment cases decided by the courts.

Second, the cases indicate a trend toward federal intervention in the property tax area, and a trend toward resolution of property tax disputes in the federal courts, as opposed to the state court systems. This is a trend that is going to continue, I'm afraid. Congress' inclination to legislate exemptions from the property tax for certain types of property and certain property owners is not apt to decrease. In fact, federal exemptions beget nothing but requests for more exemptions, and special treatment short of exemptions afforded some taxpayers does nothing more than encourage their neighbors to ask for similar special treatment, so that one can almost expect to see the day when all but a few of us are doing to be designated as "special" and only the underprivileged few will be paying a substantial amount of property taxes.

At the state level, meanwhile, legislatures will continue to make their own changes in property assessment as it applies to utilities. And every change made will probably generate litigation, though few changes will really make assessments for utilities more accurate or more equitable.

Whether money and might will win out over right in the end, I don't know, but it is reasonable to expect that money and might will have an impact in legislative bodies, and with those other law-makers, the judiciary. We can only hope that judges, attorneys, and litigants will also continue the search for a right decision of the utility assessment disputes in which they become involved — legal right and/or moral right. This is a trend that must continue.

PANHANDLE EASTERN PIPE LINE COMPANY

3444 BROADWAY

P O BOX 348

KANSAS CITY, MISSOURI 64141

K. E. KALEN
PRESIDENT

June 20, 1985

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
Room 2137A, Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Rodino:

It has come to my attention that at a hearing June 12 before your Subcommittee on Monopolies and Commercial Law on H.R. 2092, Ms. Carol Bonebrake, Director of Taxation of the State of Kansas, made reference to a "country club" built in Kansas by Panhandle Eastern Pipe Line Co. and said it was included in the company's rate base.

Please be advised that the statement made by Ms. Bonebrake is erroneous. The facility involved is a golf course -- not a "country club." It was constructed on company-owned land. The cost of this golf course, which is part of the Company's health and welfare program for employees and retirees, is not included in the costs underlying the rates our pipeline is authorized to charge pursuant to the jurisdiction of the Federal Energy Regulatory Commission. In short, none of the gas consumers supplied by our pipeline pays any of the cost involved with the golf course.

We request that this letter be included in the record of the subcommittee as appropriate to negate any unwarranted inference from the statement made at the June 12 hearing.

Your cooperation in this matter is appreciated.

Sincerely yours,



K. E. Kalen

BEST COPY AVAILABLE

The Honorable Peter W. Rodino, Jr.
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June 20, 1985

cc: Honorable Jack Brooks
Honorable Don Edwards
Honorable John F. Seiberling
Honorable William J. Hughes
Honorable Mike Synar
Honorable Dan Glickman
Honorable Edward F. Feighan
Honorable Lawrence J. Smith
Honorable Hamilton Fish, Jr.
Honorable E. Clay Shaw, Jr.
Honorable William E. Dannemeyer
Honorable Hank Brown
Honorable Carlos J. Moorhead
Honorable Henry J. Hyde
Mr. Warren Grimes, Majority Counsel
Mr. Allen Coffey, Minority Counsel

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KANSAS DEPARTMENT OF REVENUE
Division of Taxation
 State Office Building - Topeka, Kansas 66625-0001

October 4, 1985

The Honorable Peter W. Rodino, Jr.
 Chairman, Committee on the Judiciary
 Room 2137-A, Rayburn House Office Bldg.
 Washington, D.C. 20515

Re: H.R. 2092

Dear Mr. Rodino:

Following the hearing on June 12, 1985, before your Subcommittee on Monopolies and Commercial Law on the above reference bill, K. E. Kalen, President of Panhandle Eastern Pipeline Company, by letter dated June 20, 1985, took issue with certain comments I made during my testimony. Specifically, Mr. Kalen felt that my characterization of the golf course which Panhandle Eastern constructed on their compressor station here in Kansas as a country club was in error. I do not believe my choice of language was in error as the Webster Ninth New Collegiate Dictionary defines "country club" as a "suburban club for social life and recreation especially one having a golf course". I believe that the description of that facility in the enclosed article from the February 6, 1983 edition of the Kansas City Star indicates that referring to this facility as a country club is not an error.

Secondly, Panhandle Eastern has claimed that gas consumers are not paying any of the cost involved with the golf course. The enclosed article from the Kansas City Star, which I relied upon, certainly reached the opposite conclusion. At that time, the Kansas Department of Revenue confirmed the accuracy of the article's content through Andy Fordenwald, Panhandle Eastern's Tax Representative.

To date, Panhandle Eastern, for ad valorem tax purposes, is still maintaining that the golf course is part of their pipeline's operating property. There has been no change in their ad valorem tax returns filed with Kansas to indicate that this property is not part of their operating system.

Thank you for an opportunity to respond. I hope that my comments, with the enclosure, will be included in the Record.

Sincerely,

Carol B. Bonebrake
 Director of Taxation

CCB:ns
 encl.

Director of Taxation (913) 296-5800 - Income & Intermittent Tax Bureau (913) 296-5801
 Sales & Service Tax Bureau (913) 296-5802 - Internal Tax Bureau (913) 296-7713

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[From the Kansas City Star, Feb. 6, 1983]

GOLF AT RABBIT CREEK: THIS ROUND'S ON YOU—CONSUMERS FOOT THE BILL FOR GAS PIPELINE'S PRIVATE COURSE

(By Myron Levin)

Louisburg, Kan.—From the natural gas compressor station in this town 40 miles from Kansas City, grateful workmen can gaze uphill at the Rabbit Creek golf course, a luxuriant spread of grass and trees and ponds in the midst of Kansas prairie.

Natural gas customers in Missouri, Kansas and several other states are paying for the golf course, which was developed by Panhandle Eastern Pipeline Co., for the private use of employees and guests.

The golf course cost more than \$1.3 million to build and takes more than \$100,000 a year to run, counting the salary of the golf pro.

Company spokesman Fred Ebdon at Panhandle Eastern's headquarters in Houston described Rabbit Creek as "an employee benefit that is useful to the company in both attracting and holding the type of employees we wish to attract and hold.

"Lots of companies provide more lavish and posh things than this one for their employees," he said.

Panhandle Eastern began work on the course about four years ago and is still putting the finishing touches on the back nine. But the full cost went into the rate base on Oct. 1, when the Federal Energy Regulatory Commission allowed the company a \$528 million rate increase, subject to refund after hearings.

This means that in places such as Kansas City, Indianapolis and Cleveland, gas customers are paying off the investment in fairways and greens, plus a profit, in the same way they pay for new gas delivery lines.

Although the amount of the increase may be reduced through negotiations or hearings, the federal commission tentatively agreed that the golf course is a "legitimately incurred . . . expense that customers should bear, according to commission spokesman Lori Mark.

"It has to do with employee health as related to productivity," Ms. Mark explained.

Ms. Mark said the commission—which regulates gas sales by interstate pipeline companies such as Panhandle Eastern to utilities such as Gas Service Co. and Missouri Public Service Co.—"can't be in the business of running (these) companies, so there is a presumption of prudence with regard to management's discretion in any matter . . .

"The standard is whether or not these costs are extravagant or unnecessary" Ms. Mark said. "And the commission determined that they were not."

This view is not universal among Panhandle Eastern employees, even among those who play golf.

"For the everyday Joe . . . who's looking at being cold or paying high bills, a couple of million dollars spent for something as frivolous as that (doesn't) set right," said one Panhandle Eastern worker who asked that his name not be divulged.

Mr. Ebdon, who said Panhandle Eastern also has a nine-hole golf course at a compressor station in Texas, had never heard of the Louisburg course when initially asked about it. He said stockholders surely had footed the bill, but after checking he said he had been mistaken.

Panhandle Eastern has about 50 workers in Louisburg. The golf course is an 80-mile round trip for hundreds of other company employees based in Kansas City and Overland Park.

Panhandle Eastern sculpted the first nine holes from rolling surplus company land adjoining the Louisburg compressor plant—one of a series of stations spaced about 80 miles apart where huge engines and pumps push gas from Texas, Oklahoma and Kansas up the line to utilities in Missouri, Illinois, Indiana, Ohio and Michigan.

Because Panhandle Eastern needed plenty of water to sprinkle the greens, the company also hired an earth-moving contractor to expand an existing cooling-water lake by raising the dam four feet.

Then the company decided to add a back nine, but had to acquire more land from a neighboring farmer.

It turned out that the back nine was too soggy, so the earth movers came back to dig a new water collection pond.

To groom and manicure the links, Panhandle Eastern also invested more than \$250,000 in maintenance equipment.

Not to provide for golfers alone, Panhandle Eastern also built a picnic pavilion and restrooms for an additional \$28,000.

To battle the dust of traffic on the rural access road, Panhandle Eastern spent another \$120,000 to pave 1.2 miles of the road.

All of this came to more than \$1.3 million. But a golf course needs supplies, electricity and staff, which cost money, too. Mr. Ebdon said he doesn't know the annual operating cost, but salaries for the golf pro, the superintendent and maintenance staff come to about \$100,000 per year.

Mr. Ebdon scotched a rumor that Panhandle Eastern intends to add tennis courts and a clubhouse. "If anything like that is done, I'll call you," he said.

Spokesmen for both Panhandle Eastern and the federal regulatory commission dismissed Rabbit Creek's costs as inconsequential.

Mr. Ebdon said it is "absolutely ridiculous" to focus on an investment that is so minuscule a part of the company's total \$2.3 billion physical plant.

Ms. Mark said the commission regarded the cost as *de minimis*, or too piddling to worry about.

Rabbit Creek is indeed a trifle compared to two other projects that have affected customers of Panhandle Eastern and its corporate sister, Trunkline Gas Co. The two pipeline companies, both Panhandle Eastern Corp. subsidiaries, together form one of the three biggest pipeline systems in the country.

Through another subsidiary, the parent company holds a 22.75 percent share of the Northern Border pipeline through which large volumes of expensive Canadian gas began flowing to the U.S. Market last fall.

And Trunkline has invested about \$650 million in ocean-going tankers and off-loading facilities at Lake Charles, La., to import expensive liquid natural gas from Algeria.

The Canadian gas, which costs \$4.94 per unit (1,000 cubic feet), and the Algerian gas, which costs \$6.55, now account for about 24 percent of the fuel Panhandle Eastern and Trunkline supply to utilities.

Because of the commitments to buy this expensive fuel—and dwindling demand for gas—Panhandle Eastern has reduced its reliance on cheap gas from such traditional supply areas as the Hugoton field of southwest Kansas, Oklahoma and Texas, where large volumes of gas costing less than \$1 per unit are being left in the ground.

These factors were responsible for the \$528 million annual rate increase—an increase of 30 percent—that Panhandle Eastern put into effect on a temporary basis Oct. 1. Most of the amount stems from Panhandle Eastern's investment in the Northern Border pipeline.

Now Panhandle Eastern and Trunkline are seeking commission approval to raise their rates a combined total of \$994 million starting March 1 to cover higher gas purchase costs, mainly because of the Algerian gas.

This purchased gas adjustment would boost Trunkline's rates by more than 55 percent overnight.

Panhandle Eastern's rates would go up about 19 percent, reflecting its purchase from Trunkline of part of the Algerian gas.

The 850,000 customers of Gas Service Co. would be spared the brunt of the increase because the utility does not buy from Trunkline and gets only 3 percent of its gas from Panhandle Eastern. Gas Service's average Missouri residential customer would pay an extra \$7.28 a year. The typical Kansas customer would pay \$2.40 more a year after the March increase.

But customers of utilities more dependent on Panhandle Eastern and Trunkline would be more sharply affected. Laclede Gas Co. of St. Louis, for example, buys all its gas from a pipeline company that in turn buys 17 percent of its supply from Trunkline. So the March increase would raise the annual gas bill of the typical Laclede customer about \$34.

The Missouri Public Service Co.'s north central gas system, which serves 11,400 customers in Chillicothe, Trenton and several other towns, buys all of its gas from Panhandle Eastern. As a result of the March increase would add about \$102 a year to the gas bill of the average customer on the north central system, according to Missouri Public Service Co.

Panhandle Eastern has defended the Algerian and Canadian projects as necessary to prevent supply disruptions in the future.

Company officials say the current gas glut is temporary and that shortages would occur in coming years without the imports.